

August 7, 2009

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:

The Nathan Cummings Foundation is a private grant making foundation with an endowment of approximately \$385 million, a significant portion of which is invested in publicly traded U.S. equities. As a long-term institutional investor, the Foundation takes an active approach to ownership, voting its proxies and filing numerous shareholder proposals each year. We believe that investors can and should serve as a countervailing power, pushing corporations to focus on issues with implications for both long-term shareholder value and our society.

As the ultimate owners of a corporation, shareholders should have a meaningful say in the election of directors as well as an opportunity to nominate their own candidates for election where circumstances warrant it. We believe that providing long-term shareholders with a reasonable mechanism for exercising their rights to nominate and elect directors to corporate boards, such as that outlined in the Security and Exchange Commission's proposed rule *Facilitating Shareholder Director Nominations* ("Proposed Rule"), is vitally important and could serve as a key element in remedying some of the systemic flaws that contributed to the current economic downturn.

The current executive compensation system, for instance, contributed to the downturn by encouraging a short-term focus and excessive risk-taking at many corporations. While shareholders can currently attempt to address executive compensation issues by filing shareholder resolutions on the issue, these resolutions are most often non-binding and, because boards continue to be largely unaccountable to shareholders, are often ignored, even when the resolutions in question receive a majority vote. When new compensation rules are implemented, companies and their cadres of lawyers and compensation consultants inevitably find a way around them. As Nell Minow of The Corporate Library pointed out in her recent testimony before the Committee on Financial Services on June 11, 2009, "We speak of this company or that company paying executives but it is really the boards ... until we change the way they are selected, informed, paid, and replaced we

will continue to have the same result. Until we remove the impediments to shareholder oversight of the board, we cannot hope for an efficient, market-based system of executive compensation.”

Executive compensation is only one example of the ways in which the current lack of accountability among corporate boards of directors contributed to the downturn. For this and other reasons it is paramount that the impediments to shareholder nominations of director candidates be removed. The Nathan Cummings Foundation strongly supports the Proposed Rule aimed at facilitating shareholder nominations of directors. The following is a summary of the Nathan Cummings Foundation’s views on the Proposed Rule:

- Application of the Rule – The Nathan Cummings Foundation generally supports the application of Rule 14a-11 as proposed. We also support the prompt issuance and implementation of a final rule. The Foundation is a member of the Council of Institutional Investors (CII) and agrees with CII’s contention that the inclusion of triggering events in the final rule would unnecessarily complicate the proxy mechanism and inhibit prompt action from long-term shareholders in cases where they have legitimate concerns about a company’s board. We therefore oppose the inclusion of triggering events in the final rule.
- Shareowner Eligibility Criteria – We generally find the Commission’s proposed shareowner eligibility criteria to be appropriate. With respect to meeting the proposed ownership thresholds, shareholders must be allowed to aggregate their holdings to meet the tiered ownership requirements. We believe that it is reasonable to require that shareholders hold a company’s stock for at least one year before being eligible to make use of the access mechanism. Shareholders nominating directors should be required to hold their shares at least until the date of the meeting.
- Nominee Eligibility Criteria – The Nathan Cummings Foundation does not believe that it is necessary to require nominees put forward by shareholders to be independent of the nominators. Corporations’ fears regarding the election of directors representing special interest groups are largely unfounded as any nominee would need to gain the support of a broad array of shareholders in order to actually be elected.
- Shareowner Nomination Limits – The Nathan Cummings Foundation finds the Proposed Rule’s proscriptions against the use of the mechanism to achieve a change in control to be reasonable. We find the limit of no more than 25% of seats to be reasonable as well. As others have noted, however, we believe that shareholders should be able to nominate at least two directors to prevent situations in which shareholder nominated directors are rendered ineffective due to issues such as the lack of a second for motions made by a dissident director.
- First-in Approach – This approach to determining who among multiple shareholders is eligible to have their candidates included in the proxy may be problematic. Instead, we suggest using some combination of factors such as length of ownership and size of holding to determine which nominees should be included in a company’s proxy statement in such instances.

The Nathan Cummings Foundation strongly supports the Securities and Exchange Commission's decision to propose rules granting shareholders access to management's proxy for the nomination of independent director candidates. In theory, shareholders are given the right to select individuals to oversee a company on their behalf. Current regulations, however, prevent shareholders from effectively exercising this important right. Indeed, shareholders are largely prevented from having any meaningful input into the selection of directors. We urge the SEC to remedy this problem through the implementation of the Proposed Rule and provide shareholders with a truly meaningful voice in the election of corporate directors.

We thank you for the chance to comment on this important topic and look forward to your response regarding our comments. Please do not hesitate to contact us at 212-787-7300 with any questions you might have.

Sincerely,



Lance E. Lindblom  
President and CEO



Laura J. Shaffer  
Director of Shareholder Activities