UNOFFICIAL TRANSCRIPT OF THE
ROUNDTABLE DISCUSSION ON
PROPOSALS FOR SHAREHOLDERS

Friday, May 25, 2007
9:17 a.m.

SEC Headquarters
100 F Street, N.E.
Auditorium L-002
Washington, D.C.

Diversified Reporting Services, Inc.
(202) 467-9200
CONTENTS

PAGE

Openings Remarks ............................................ 3
Chairman Christopher Cox, U.S.
Securities and Exchange Commission

Introduction ................................................. 5
John W. White, Division of Corporation Finance

Panel One - Vindicating fundamental state law rights 6
Moderators:
John W. White, Division of Corporation Finance
Martin P. Dunn, Division of Corporation Finance

Panel Two - Promoting communication between shareholders and
the company ............................................. 52
Moderators:
John W. White, Division of Corporation Finance
Martin P. Dunn, Division of Corporation Finance

Panel Three - Revisiting the relationship between state law
rights and the federal proxy rules ........................ 90
John W. White, Division of Corporation Finance
Martin P. Dunn, Division of Corporation Finance
PROCEEDINGS

(9:17 a.m.)

OPENING REMARKS

CHAIRMAN COX: Good morning. I'm going to call this to order just a little bit late this morning, and I appreciate very much everyone's being here. Welcome to what is going to be the SEC's third and last roundtable at least this month on proxy process.

Let me begin by recapping for those of you who may not have been following these roundtables closely what we've heard and learned thus far. At our first roundtable on May 7th we discussed the state law underpinnings of shareholder rights to nominate and vote for directors. We looked at the way that shareholders can make proposals that are binding on companies as well as the way that the federal proxy rules have embellished state law rights when it comes to nonbinding proposals.

At our second roundtable yesterday morning we focused on the way that the exercise of shareholders' state law rights are very much affected by the mechanics of the proxy voting system. As you can see it's been a busy and a productive month and the commission and our staff have benefitted from the enthusiasm and the willingness of our panelists in these two roundtables to share their knowledge and their expertise with us.
Today's roundtable will build on what we've learned and address the most important question before us, how can we improve our proxy system going forward. What approach by the SEC will best serve the rights and the interests of shareholders in the way that Congress intended?

Today's panelists include representatives of a broad spectrum of shareholders who use the federal proxy process to make proposals. The first panel this morning will consider what types of binding proposals by shareholders should be included in the company's proxy statement. They'll address questions such as whether the federal government should impose an eligibility requirement if there isn't one under state law and what kind of disclosures shareholders might need about the person making the proposal in order to make an informed decision.

Our second panel will consider the ways in which shareholders can communicate with their companies and vice versa in addition to the annual meeting of shareholders. Given the advances in telecommunications technology that we all enjoy, in fact that we're going to enjoy today because we'll have one panelist participating via telecommunications from Stanford later on, there may be more effective ways for shareholders to communicate with the company beyond what everyone acknowledges is the rather cumbersome federal proxy solicitation process.
Several of the speakers on this panel have often used rule 14A-8 to make nonbinding shareholder proposals to companies.

In light of their experience, they and the other panelists will be asked for their views on how something along the lines of an electronic shareholder forum might permit shareholders to promote their ideas and vote on nonbinding proposals more often than annually.

Finally, our third and last panel will help us knit together all that we've heard in the previous panels and in the preceding roundtables and address the question whether any or all of these ideas for changes in the federal system would better vindicate shareholder state law rights than the current system.

Since four of the members of our third panel appeared at our first roundtable, we'll have come back full circle to the fundamental questions that we addressed that day of the relationship between federal and state law. At this time hopefully we'll be a little bit better informed and a little wiser.

On behalf of the commissioners and the commission staff, I'd like to welcome our distinguished panelists, beginning with the first panel, to this day's roundtable. And thank you very much for your participation. We're looking forward to discussing and learning.
MR. WHITE: Thank you, Chairman Cox, and good morning. I am John White, director of the Division of Corporation Finance, and I am very pleased to welcome you as well to the commission's roundtable on proposals for shareholders, our third and final roundtable for this month at least, as Chairman Cox said.

Chairman Cox has laid out what we are hoping to accomplish in each of the panels today, so I will not go through that again, but I will point out that we are very pleased at this final roundtable to have the -- I guess I will call it the stakeholders, the companies and investors with experience in the area of shareholder proposals. And of course on our final roundtable, final panel, we will also have some of the participants from our first roundtable rejoining us from the academic world and the judiciary.

To my right is Marty Dunn, deputy director of the Division of Corporation Finance. He's joining me again at the moderator table for the morning.

A few rules of the road. Similar to the previous roundtables, we've prepared a number of questions for the panelists. They are in the agenda and up on the web site for those who would like to see them. We also anticipate we'll be having questions from the commissioners.

We have specifically asked each of the panelists
today not to provide formal opening statements. Instead we
want to go directly to our questions. However we have
encouraged them like we encourage each of you in the audience
and each of you listening by webcast to submit written
statements and other materials that you'd like to us. There
is a combined public comment file for all three of the
roundtables out there and we would certainly like to have any
submissions that you'd like to make.

We will, at the end of each of the panels as we
come to the close, ask each panelist to give us a minute or
two of their closing thoughts and suggestions for the
commission. That's in lieu of opening statements; we'll have
closing comments.

To ensure that everything runs smoothly we would
ask both the panelists and the commissioners, if you would
like to be recognized to please turn your tent card up on
end. And Marty and I promise to make every effort to
recognize everyone, not necessarily in the order you put your
tent cards up, but we will do the best we can.

So with that I'd like to move to our first panel.
Let me introduce everyone starting on the far left. Rich
Ferlauto, director of corporate governance and pension
investment at the American Federation of State, County and
Municipal Employees; Jonathan Gottsegen, director of
corporate and securities practice group at the Home Depot;
David Hirschmann, president of the U.S. Chamber of Commerce Center for Capital Markets Competitiveness; Bess Joffe, who works on corporate governance issues at Hermes Equity Ownership Services; Bill Mostyn, deputy general counsel and corporate secretary at Bank of America; and Damon Silvers, associate general counsel at AFL-CIO.

So let’s go to our first topic. As Chairman Cox described, at our first roundtable there was a good bit of discussion about the fact that some binding shareholder proposals, including proposals to amend the bylaws to permit shareholder nomination of directors are permitted under state law but are not permitted today under our proxy rules.

So Damon, I guess we’d like to start with you and go to our threshold question of whether the federal proxy rules should be revised to be more consistent with the state law rights of shareholders and permit any matter that can be made binding under state law to be included in a company’s proxy statement.

MR. SILVERS: Thank you, John. It's a pleasure to be here with the commission.

The question you pose I think points out this sort of anomaly that there are proposals that are valid under state law that have real effect that are not, that at times the commission staff has not allowed to go through under 14A-8. And this seems sort of perplexing and strange in a
And so the solution that's proposed, to allow all such proposals and take the burden off of Marty and his colleagues to sort them out which one is which under current commission practice has a lot of merit on its face. It embodies what I believe has been the prior discussion of the fact that under state law shareholders have sort of three fundamental rights. One is to simply participate in the annual meeting in all of its forms. Two is to amend the bylaws and three is to elect directors.

It's particularly troubling I think that this hole that you identified and that this panel seeks to address is in the area of director elections primarily because that right is so fundamental under state law. There are three issues that I think the commission and the staff need to look at if they want to go in this direction. And I think that, assuming that reasonable and effective answers to these issues are found, that investors would be quite supportive of moving in the direction that the question poses.

The first issue is understand what exactly the zone, the range of proposals that would then be automatically allowed would be. The question of what is a proper, binding proposal under state law, even just in Delaware, is one that has not been extensively litigated, and there are quite differing theories out there about how broad that range is.
Shareholders at various times both in front of the commission and in courts have urged that the latitude for binding proposals is quite broad. The corporate community has generally viewed provisions of Delaware law that vest the management of the corporation and the board as narrowing that dramatically.

It's unclear, I believe, and as part of trying to understand that you'd have to understand what the commission would do to resolve questions about what that range is. I don't think that you would want that result to be the commission appearing before the Delaware courts 20 or 30 times a proxy season. I don't think that's a practical response.

Secondly, I think the commission would want to look at the question of whether this approach would create its own anomaly. And the anomaly would be that there would be certain items which you could not bring as a precatory proposal but you could only bring as a binding proposal.

I think investors generally feel that the preferable way of making change in corporate governance is through bringing precatory proposals which outline a principle, which are then enacted in detail by the board who are familiar with some of the ramifications thereto, and that binding proposals are generally only brought when a board simply refuses to listen to shareholders.
And so I don't think the commission would want to close off that as the general way of doing things, particularly in areas as important as say, directorial elections. And so I think that if the commission wanted to look at those two issues and figure out appropriate ways of handling them, that this is a very attractive way to proceed.

I would conclude by saying one thing, which is that I disagree with the premise and the materials that precatory proposals are a creation of the federal law. The federal law really doesn't have the ability to create state law rights, and the right to bring a precatory proposal is part of the broad rights of participating in an annual meeting.

It's certainly true that the federal rules have heightened the importance of them and made them more common.

Thank you.

MR. WHITE: Jonathan, do you want to give your views on this question?

MR. GOTTSEGEN: Well, to answer your initial threshold question, John, straightforward, I don't think the proxy rules are in need of revision to be more consistent with state law. In my view, from where I sit, the commission at the end of the day, in order to improve our system going forward, which is the goal articulated by Chairman Cox, should focus on only a few specific changes to the shareholder proposal process.
From the in house perspective, with the exception of a handful of pieces of 14A-8, there is strong familiarity and history that both companies and shareholders can rely on. And the rules work pretty well, as is evident by the number of proposals that companies receive and include in their proxies each year. And the rules work well, as is evident by the number of contested elections that we see more and more of.

So I think, to give a very simple answer to the initial question, I would move cautiously in terms of revising the rules in an effort to make them more consistent with state law.

MR. WHITE: Bill, how do you feel about that?

MR. MOSTYN: I would agree with many of the things that Jonathan said. My view is that, especially in terms of director nominations, I think this is an issue that is a solution looking for a problem, frankly.

Shareholders have a right today to bring up their own slate of directors and contest the directors slate. And the costs of that are really not that much. In fact, I think the costs are going to be coming down substantially in terms of use of the internet.

I suspect that Rich, you probably spent more money on that AIG case in legal fees than it would have cost you to run your own slate at AIG. It's not that big of a deal. I
think we're making a much bigger issue out of it than it
really has to be.

MR. DUNN: Rich, I won't ask you to answer that, but
I was going to turn to you next, Rich, because one of the
questions that Damon's point raises is -- do you think that
this would result in companies seeing more binding if you
went that route, and is that a good or a bad thing?

MR. FERLAUTO: We the AFSCME Fund probably has more
experience drafting binding proposals than probably any other
shareholder or shareholder group. We've drafted and filed I
think about 20 over the past five years, a number of them
relating to the access question, but also majority voting.
Leo Strine is in the audience here -- you know, capturing the
solicitation expenses.

There are certain barriers and requirements that
make -- that if narrowed shareholder access just to binding
proposals I think it wouldn't do the issuers any good and
certainly wouldn't do the proponents very good.

First of all you've got -- the question that you
first posed is that there's a wide range of state law that's
developing now in terms of what can be binding or not. You
know, certainly we've got the recent changes in North Dakota.
We've got changes that are moving through the legislature in
Ohio. We've had recent changes in California so that for
shareholders to decide or to have a competition among states
regarding what binding rights might exist might be difficult.

The other difficulty, which I think should be of concern to the issuers on this as well as ourselves is that under current rules we have 500 words. To craft a sufficiently robust amendment to the bylaws in 500 words, which would include the leading material that doesn't work in adding material that would give the detail that would be required, particularly when there are nuance questions to be dealt with, is burdensome and frankly quite difficult to do, although I think we're capable of doing it.

We spent a lot of time trying to figure out how that works. I think from the issuer perspective they would much rather hear our views and have some flexibility in drafting language in consultation with a shareholder vote that would urge them and give them impetus for that kind of -- those sets of changes.

And frankly, other than the I-8 question around access, the 14A-8 process works pretty well. It's an imperfect system but it seems to work for everybody basically because there's been at least 50 years of sort of robust discussion in which shareholder rights or the rights for more robust communication have developed. And in practice you've got corporate secretaries, you have issuers, you've got the proponents, who are all comfortable with the system and understand how to make it work pretty well given the
So in short I think binding proposals are a tool that would be used only occasionally, and for the most part precatory proposals would be the preferred method of engagement. And the problem that we run into -- again, it's the anomaly that Damon point out -- is that you've got a fundamental right under Delaware and most state laws around director elections.

That's really the principle upon which the structure of the corporation in the U.S. has been created. And that's one right that communications vehicle doesn't allow the discussion around. And that's what we're focused on. And rather than taking our broad battle axe to how 14A-8 might be recreated in some way, my suggestion is that you really focus on binding proposals related to -- or any type of proposals for that matter relating to the director election question, which is allowable under state law.

MR. DUNN: Before we move off the threshold question I want to give David and Bess a chance. I'll start with David and then let Bess be next.

MR. HIRSCHMANN: Well, thank you. Thanks for including me and thanks to the commission for holding this series of roundtables. I had the chance to listen to the previous roundtable and thought it was a very constructive discussion.
The question here is really whether the commission should move in this direction. I want to make it clear that we believe that the second question, which is the can question, is also important, which was discussed in previous roundtables. And my views of that ultimately will be decided in the courts.

But the should question hinges on whether the commission believes that in doing this it will advance its to-for mandates. And in some ways when thinking about this it just seems to me that it's based on -- the should question is based on somewhat of a false premise, the premise that somehow if these state rights were reflected in the proxy process they might be used for a different purpose or more responsibly than the current rights that shareholders have under the proxy.

And I'm not sure that that is really the case. It's really about one of two things. It's either about leverage over the board or it's about changing the governance model and having a board that represents a diversity of constituencies that reflects more the European system or about both.

You know, I believe that Damon and Richard do their jobs very well. If I tomorrow woke up and worked at the AFL-CIO, I'd want to have as much leverage for my members as possible. And I believe that they, frankly, use this
leverage more responsibly than most.

It doesn't mean we agree with everything. Mondays, Wednesdays and Fridays -- agrees with organized labor, on immigration and other issues. On Tuesday and Thursdays we're fighting on card check and other issues. I'm just not sure that giving this additional leverage would serve ultimately long-term shareholder value or that others would use it as responsibly as Damon or others might.

Companies tell us that at the end of the day when they sit down with those proposing these proposals, especially AFSCME or the union proposals, it's always about the union agenda. And I think if you look at the track record of AFSCME last year, in more than half the cases, boards sat down and negotiated an outcome that they were willing to live with, with the unions.

The question is, whether that's good or bad, do we need to enhance that leverage. And the second question -- issue is a question of what's the right governance model. Do we really want boards that represent a diversity of interests with fractious and conflicting agendas, whether it's unions or environmental groups or biotech companies, pro- or anti-stem research groups or a defense company's views on the war or shareholders who might want short-term gains versus long-term gains?

I don't think the commission wants to put the staff
in the position of deciding what board directors qualify or
don't qualify. And you know, it's a worthy debate to decide
what the board should look like, but I don't think simply
wrapping this in the name of democracy would produce a better
long-term value for shareholders.

MR. DUNN: Well, Bess, before I turn to you, since
it seems like everybody agrees on the panel -- a couple of
things David said I thought were quite interesting and turn
to you. One is he mentioned the European system and he also
mentioned the notion of leverage and rights that folks have
now.

A number of years ago I met with somebody else at
Hermes and they pointed out that the European system which
provides them the leverage means that they rarely have to use
it, which is kind of an interesting balance there. So I
think it's a good point to turn to you to close us up here,
and if you can add anything to the leverage point I
appreciate it.

MS. JOFFE: Well, thank you very much for the
opportunity to speak here.

I think that is true very much about the European
system, the U.K. system in particular and several other
common law jurisdictions around the world as well. And the
point that I was going to make is generally with -- in the
U.S. context I would agree with much of what Jonathan said,
that the system tends to work quite well as it is currently. But I think if the general -- if you want to limit the number of precatory proposals that shareholders submit on an annual basis, I think in some way enfranchising them with more rights, that would go a long way to see a diminished number of proposals being submitted.

I think majority voting is key to that. An advisory vote on compensation structures is also key. I think just having a bit more say in what goes on in a company and different ways of engaging with boards and management would alleviate the pressure of the proposals in a lot of instances.

And with respect to the issue of binding and nonbinding proposals, when I see a proxy card on my desk we evaluate them much on the same basis. And I actually think that -- I mean we oppose many nonbinding proposals because they come across as too prescriptive to the board or too restrictive. And we would like to stay away from increasing the number of binding proposals.

It's very difficult for shareholders to accurately draft these types of proposals that can then be actually useful to companies. And that would create a whole other set of problems. I think Rich highlighted some of them.

The other sort of theoretical issue is that the bylaws are really very important constating to a corporation
and we wouldn't want to see those changed constantly with several of the issues that come up as nonbinding proposals. So I think there has to be a balance between the two. But I think you could decrease the number of proposals that you see by enhancing other rights.

MR. DUNN: To jump into -- oh, I'm sorry, Rich. Go ahead; I didn't see your card.

MR. FERLAUTO: Just to respond generally here, you know, one person's leverage is another institution's accountability mechanism. There is a mediating factor here that hasn't been discussed in any of the panels, and that is the fiduciary responsibility of the trustees of the institutions.

Now whether they are multi-employer funds governed by ERISA or state pension funds governed by whatever state law is applicable, there's a strict fundamental duty that the actions of those institutions be for the beneficial ownership, which is the creation in the case of my members, of long-term value related to their pension retirement system.

So to say that or to make accusations out of thin air that whatever the motivations are seem to ring fairly hollow. What we're looking for are accountability mechanisms that again are endorsed by a majority of the shareholders through a vote. And I think that's the fundamental question
In the exercise of fiduciary duty, which under ERISA law is quite explicit, given the Avon letter and 94-1, that those interpretive bulletins actually provide impetus for action on our part, that we would be actually in breach of our fiduciary duty if we weren't engaged in these fundamental issues that would create long-term shareholder value. And hopefully when we get to the materiality questions we can talk about our view of long-term value and what that means.

MR. WHITE: Commissioner Atkins, did you have a question?

MR. ATKINS: Well, yes. I guess I just wanted to follow up on this point about precatory proposals because we've been talking about the discussion and leverage that they engender. And I guess the thing that troubles a lot of people is that this discussion and leverage occurs in the shadows with the few shareholders out of really the sight of the many. And we're using the apparatus of the corporation to put forward these precatory proposals, which obviously are nonbinding. And if it's important enough to invoke that apparatus shouldn't it be only for binding things rather than just for this side show that happens without disclosure and oftentimes people don't really know what the cause and effect of it is?

MR. SILVERS: I mean to answer one level, if
investors were told that they could not withdraw proposals and could not negotiate with companies about those proposals, I suppose we can live in that environment. I'm not sure what the corporate community would think about that, but I think we'd be happy with that arrangement.

In terms of what precatory proposals are, I think it's important that the commission be aware that most comp proposals are precatory and probably have to be. Although again there's some dispute about that.

Secondly, a series of issues which I think there is very broad public support for in terms of the ability of investors who are concerned about them to raise, pretty much have to be in precatory form. And those include issues related to equal employment opportunity, the famous Cracker Barrel question, issues related to the environment, many of which have very substantial business consequences, and issues relating to human rights, which have a history going back to South Africa but today are raised in the context of the Sudan and Burma and other things of very high profile in terms of the public's view and many shareholders' view of what business in America ought to do.

I cannot see how those issues could practically, regardless of what the Delaware courts might decide, I can't see how those issues could practically be brought up in the context of binding proposals, nor would anyone want to see
them brought up that way. And I don't think it's -- I think
the notion of taking precatory proposals of the table would
be fundamentally disenfranchising.

MR. ATKINS: Just to follow up on that, I guess one
thing is most of those fail dismally when they come up on the
ballot. They never get anywhere near the majority. So I
mean obviously there are a few -- going back to my question,
the few versus the many, a few people are very interested or
agitated about it, but not the many. I just was curious
about it.

MR. SILVERS: I would suggest that Nelson Mandela
didn't think they failed.

MR. DUNN: David, you had a view on this, and then
we'll go to Bill after that.

MR. HIRSCHMANN: Two points. I think it's important
to remember why this leverage is so strong already, which is
in part because you have -- and why AFSCME and others are
more successful than others who are presenting shareholder
proposals, and that simply ISS. And that came up
significantly in the first roundtable.

You know, when you have one participant who's able
to direct over a third of the votes cast, then that leverage
becomes very powerful and that forces boards to make a choice
between two bad alternatives, either accepting something that
may not be in the interest of shareholders long-term or
spending the time and cost and money and distraction of the
board and management in order to fight the proposal.
And boards have to make the right fiduciary choice
at the time, which is it may be a cost but the greater good
for shareholders is to accept something that has a
consequence and not distract the board or spend additional
resources fighting that proposal.

MR. DUNN: We are -- clearly the commissioner has
touched a nerve here because everybody wants to talk now.
We're going to go with Bill and then Bess, and hopefully then
we're going to move on to some more specific questions.
Sorry about that, Rich, but I need to keep us moving here.

MR. FERLAUTO: Some statistics that might have been
helpful to Commissioner Atkins, that's all.

MR. DUNN: All right. Well, we'll get there.

MR. MOSTYN: I'll just make this quick. The
companies -- and I think I speak for all companies, including
yours Jonathan. We spend a lot of time and effort, a lot of
resources, corporate resources dealing with precatory
proposals. And to answer your question specifically
commissioner, in some sense it's better for us to be able to
negotiate out real quick rather than have these issues on the
proxy statement. If it means just sending a delegation to
somebody's office to have a discussion, which -- a lot of
times that's what it means, they just want to have a
dialogue, then we can do that.

And I don't see any need to raise the issue and to bring it to a vote for all shareholders. A lot of these things are just not worth the time and effort to do that.

MS. JOFFE: I would agree with Bill and just say that Hermes undertakes quite an extensive engagement program on a number of issues, mainly with respect to performance, financial performance on a global basis.

And the vast majority of discussions that we have with companies are done privately. We find that that actually works best and engenders a very good relationship, fosters constructive and collaborative dialogue with companies and it is often the case that we are really just looking for further disclosure on issues to give us comfort that certain risks are being managed in an appropriate way.

And as a result in most of the world we don't have this phenomenon of shareholder proposals that get used hardly ever. And the other point, just with respect to the discussions going on in the shadows, I think that's a very good point to make because when I do talk to companies about certain shareholder proposals on ballots, when I'm looking at how I'm going to vote, one of the first questions I ask is have you engaged with this proponent and where does this proposal come from and can you give me some context on the discussions that you've had because that informs my decision
I'd like to know where the shareholder is coming from and what kind of relationship and dialogue they've had with the company. So I think that it can be illuminating.

MR. DUNN: Okay. I'd like to move on to a little different discussion, which is -- assume for the sake of our discussion today that we move to something more towards the federal rules coinciding better with the state law and saying if it's a binding proposal that you can bring under state law that you can bring it and it would go into proxy.

Under our 14A-8 right now there's the threshold of $2,000 of ownership for a year. The U.K. system is very different. As we learned it's five percent holder or a hundred folks getting together who I think own 100 pounds each or something similar to that. Is there a notion that you'd have to balance a broader access for binding proposals with a different eligibility standard, and would that be wise or would that be too disenfranchising of folks, because there's obviously a huge range between $2,000 and five percent, at least in most public companies?

If you don't mind, Jonathan, I'd like to start with you on that and get your views on it.

MR. GOTTSEGEN: I think eligibility should be reviewed and considered for all proposals. It doesn't matter if the proposal is binding or not. It's critical that
shareholders are able to express concerns to the board and
management, however there are parts of 14A-8 that are in
desperate need of being dusted off.

To use an expression from earlier this month, I
think proponents should have more skin in the game. There
should also be an examination of employing more stringent
resubmission limitations. Regarding the latter, there are
many examples of proposals appearing on a company's proxy,
five, six, seven, eight years in a row, and that proposal
being defeated by a wide margin year after year after year.

But the proponent has the ability to come back
because of the thresholds in paragraph 12, is it, are too low
or have become too low. And the $2,000 requirement is, I
think, even more stark. And I haven't verified this, but I
was told that the threshold was $1,000 in 1942, which is 65
years ago during the administration of FDR.

So I think that both of those requirements, both of
those rules need a hard look.

MR. DUNN: Rich, since I cut you off on the last one
I'll go to you this time. And one thing, I'd like your
response to what Jonathan thought, but at the same time could
you deal with some of it by permitting more collective action
to get together smaller holders?

MR. FERLAUTO: Well, that's what I was going to say.
I think the fundamental problem here for institutional
holders, some adjustment, inflation adjustment or some other
adjustment, isn't a substantial issue. I think the question
is really the rights of the small holders in this case. And
there is a fairly robust community of small shareholders who
feel that their rights are being denied in some way in terms
of this engagement.

I was at a shareholder meeting yesterday as a
matter of fact in which there was quite a robust discussion
and engagement by the small shareholders. So that's where my
concern would be in that regard.

I'd also say that if there was some type of
materiality test what you might want to do is look at both
ends and that is an override position, particularly regarding
to issues related to I-7, to ordinary business, so that if a
filer came in with three percent or two percent or five
percent if you wanted to look at the ordinary business set of
issues, that might be an override on there because that's
material.

But again my concern is with the small
shareholders. And I'm not sure that you want to be in a
position at this point of restricting their rights.

MR. DUNN: If I could turn to Bill for one second,
I'll get to you Damon.

Bank of America gets a ton of proposals I know
because you send us a ton of letters. And we appreciate them
all. And -- they're beautifully written, yes. And the thing
I was wondering is, in the proposals you see, what's the
average size? I mean the nature of the proponents you see,
are they small, are they large, is it a mix?

MR. MOSTYN: They own generally between about the
minimum of $2,000 worth of stock to maybe $5,000 worth of
stock. They're usually the individual shareholders and they
usually have their own unique idea of how we should run the
company.

MR. DUNN: Are those smaller ones usually though
with precatory proposals or binding?

MR. MOSTYN: Generally precatory. We've had some
attempted binding proposals, yes, bylaw changes.

MR. DUNN: Damon, did you want to?

MR. SILVERS: I think in this area there's a long
history of these, both the minimum ownership thresholds and
the numbers for being able to resubmit proposals being
reexamined by the commission every decade or so. And it
tends to be very contentious because of what Rich said about
the fact that for individual investors this mechanism is
pretty much the only effective voice they've got, and those
individual investors who feel that they ought to be heard
will fight very strongly for these things.

For institutions they're less critical issues,
although the resubmission issue is important because while
some proposals may not move up, others do over time, and many
key corporate governance issues such as independent
directors, declassifying boards and majority votes for
director elections have all moved up dramatically over the
years.

I think this question really poses sort of the
subtext issues of these series of meetings, which is that
there is great concern on the part of investors about the
shareholder nominations process and on the other hand there's
no question that there's been deep opposition from at least
some segments of the public company community to those same
issues over the years. We all know that.

And currently the second circuit has found that
shareholder proposals on proxy access are proper under the
14A-8 rules as they stand today. The commission wants to
know what to do about that. One solution that the commission
could look at would be to follow the second circuit's general
view but to have higher standards for submitting a proposal
of that kind.

If you move that concept from that one issue to the
broad category, say, of binding proposals, you then implicate
these historic issues that have been intractable and not
intractable for bad reasons, intractable because they are
profound and legitimate interests involved in terms of the
small investor which is after all in many ways what our
securities law is designed to vindicate, very differently for example than the securities law regime and corporate governance regime in Europe, which really treats the individual investor as though they don't exist. Many Europeans are upset about that.

MR. DUNN: Dave wants to go next. I did want to point one thing out. One second, Dave. On the resubmission thresholds, you know, when they were set up ten years ago, you saw a lot of the precatory social responsibility issues max out at like eight, ten, twelve percent, and now you see most of them max out at like 22, 25, 28 percent. So it is possible that just the nature of the voting core has changed and what really reflects interest may have changed over the years, and it is something that may need to be looked at.

David, you wanted to chime in.

MR. HIRSCHMANN: I have two quick points. The first is a serious point, which is that in today's technology world shareholders, small groups of shareholders have many more ways to communicate with companies, so the notion that it all has to be done through the proxy I think is a false notion. We have YouTube, blogs, the communications tools to make your point. Very small groups of people can have a huge impact, and we've seen that in the political sphere. I don't think it's any different in this sphere either.

The perhaps slightly less serious point but
still -- it just helps make a serious point -- is I think the
threshold should be one percent more than the number of
shares, the percentage of shares that ISS can instruct at any
particular company.

MR. DUNN: That's a difficult rule to write. Bess
and Bill wanted to finish up this point, so we'll go in that
order. Go ahead, Bess.

MR. MOSTYN: I just want to comment about something
that Rich said. Rich mentioned shareholder rights. This is
an invention of the proxy rules I think in this context, but
one thing I would caution about is whether small shareholders
have a right to tie up the kind of resources at companies
that they do tie up for issues that really are not of general
interest to the majority of shareholders.

I think there really has to be a higher threshold,
maybe partly a materiality threshold, but we are, as
Professor Joffe said, we're subject to the tyranny of the 100
share stockholder. We are, and it's a monster that's
beginning to get even bigger.

MS. JOFFE: Until the end I was going to say I
largely echo what Bill was saying about tying up resources
and looking at the amount of money that companies are
spending dealing with so many of these proposals. And I
think that one of the ways to address it, and just to repeat
myself from earlier, is enhancing the accountability of
directors and management to all shareholders, whether they are large or small, by extending other basic shareholder rights. And I think then you address a lot of these issues.

MR. DUNN: Jon, you had wanted to go next, but if I could ask you to tie in what you were going to say with one other thing -- everybody has mentioned materiality -- and then we'll get to Damon after that. The other way to look at this of course is, is there sufficient shareholder interest in it for it to keep going forward? Another way to look at it is what's the materiality of this to the company? Is it really any effect and should that be a test?

The test in the rule right now is largely overridden by the significance language that goes along with it, so the five percent test isn't particularly forceful. If you could, address possibly ways you consider materiality of the company as well as whatever it was you wanted to add in there.

MR. GOTTSEGEN: I looked at the materiality question in advance, obviously. And I struggled with how it would work. I believe there should be some materiality threshold, but it may be difficult to apply in practice given its subjectivity.

What I wanted to come back to, Bill has the same job that I have at a different company, and what I wanted to echo is the resources dedicated to the shareholder proposal
process. It doesn't matter if it's binding or if it's not binding. Even with one proposal, what -- companies use in-house lawyers, outside lawyers, Delaware counsel, securities counsel, investor relations staff, compensation analysts; it goes on and on and on. Management and the board, the board has a role in the process. They have to be involved because at the end of the day they make a resolution to recommend or not recommend that proposal to shareholders. It is a very consuming, resource intensive process that's -- frankly, it's not just the season anymore. You know, it's become six months, nine months of the year. We have meetings with Rich's group, with Damon's group, with everyone throughout the year. It's fairly consuming.

MR. DUNN: Damon, you had wanted to go. And if could, address some of those points as well.

MR. SILVERS: Two points. One, again, I mean this meeting has this kind of sideways quality to it because there's a very specific issue involved here, which is the question of how the proxy process ought to deal with director elections questions, and then there are these very broad sort of statements that kind of scoot around it.

And I'll make one point about this, that when a statement is made that we need, that there would be less shareholder proposals if there was more accountability, all
right, what that statement is really telling you, I think, is that perhaps the commission ought to go back and look at the 14A-11 approach to these issues, the notion that you ought to have a structured, required process, as you do more or less in the United Kingdom, whereby shareholders can nominate directors on the company proxy.

Now that issue has been done to death by the commission at various times and now we are looking at basically ways of dealing with shareholder involvement and director nominations through a sort of private process, through the 14A process of allowing shareholders to bring that idea to companies one by one as an alternative.

I think most investors, and I'm sure you've heard this already and will hear it again, most investors would be happy with the commission going in either direction as long as it was real, as long as there was a real ability to have accountability to long-term investors around the board election process.

Either way works. Today we're really focused on the voluntary way, all right, which has a nice ring to it.

Now I would say this about -- every time this commission probably back until the 1940s has convened on this subject I am sure that someone from the corporate community has pointed out the fact that there are costs involved in shareholder proposals. Now if we were hearing this from very
small companies I suspect -- I have a little bit of sympathy. Bank of America and Home Depot can afford the price of a meeting in order for there to be accountability. Home Depot could afford to pay Bob Nardelli what they paid him; they can afford to meet with shareholders, and they can afford the cost of dealing with shareholder proposals.

Now it is true that just as it could cost the shareholder a lot of money to litigate it can also cost a company a lot of money to fight tooth and nail to the bitter end to keep a proposal off the proxy process. If that's what they choose to do, we certainly can't stop them. But to them come here and complain that it costs a lot of money to fight to silence your investors, it just doesn't have the ring of credibility.

MR. DUNN: Rich, I wanted to go to you next, but I also want you, as you finish this up, to move to our next topic, which is something Commissioner Atkins had discussed earlier. And that's the notion of, if you're expanding this, is there some notion that there needs to be more in the proxy than simply, "I'm Marty Dunn, I live at x address, and I put forth this proposal." Should there be some more disclosure regarding the nature of the proponent? Is that of interest to the people deciding how to vote? Is that important in figuring out the process? Is it important for accountability on both sides, to use Damon's phrase?
MR. FERLAUTO: Sure. Let me follow up first and
then I'll end up there.

One is you've got to talk about the price of
communication of the issuer to the broader community and that
in attempting to -- and if you narrow that or you expand that
rather in a way that is so broad that what you're going to
end up with is chaos -- and attempting to deal with chaos is
going to be much more expensive for the Home Depot or the
Bank of America than a mediated, structured process through
14A-8 and shareholder meetings that if they need to worry
about every single posting on the web every day and were in a
virtual shareholder meeting that occurs 24/7, 365 days a
year, what you've got to do is you've got to establish a
system that monitors MySpace or something like that.

And I'm not sure that that's productive for
anybody, but if that's the terrain that gets established for
communicating with shareholders, that's what you're going to
get. So I think our preference and the preference of the
issuers are really very common, are absolutely common. And
that is give us a structured process that's rational, that's
got rules of the game, that sets benchmarks for
participation, and we will attempt to work within those
rules.

If you give us chaos, it's going to be
extraordinarily expensive and the communications that you see
now are -- the communication costs are just going to become exponential for everybody.

So trying to deal with the very specific issue that Damon was honing in on about -- the I-8 issue about proxy nominations I think is key, and if we get lost it will be a problem for everybody.

In returns -- to disclosure issues, we're about nothing if we're not about disclosures. We believe in absolute transparency and the more transparency the better.

At the same time, there are certain collective action problems, which I'll talk about a little bit later hopefully in closing.

So that filing a 13-G form or something like that, I think, for an institutional shareholder is not a big deal. We are long-term passive investors and many of our funds, many of the big public funds need to file the G form anyway because they're large enough or could take positions that are larger.

If you get into 13-D, I think there are other issues that are involved, collective action issues that become much more complicated. Again, you run into the problem of how do you mediate that in an electronic world where you're not exactly sure who's participating in any particular point in time, so it becomes problematic for the smaller shareholders.
So in essence, fundamental transparency is a good idea. How do you apply it in an electronic system? I really couldn't -- I don't have a clue.

CHAIRMAN COX: I wondered if I might ask the moderators if I can jump in at this point. Bess, earlier you said, on this point about disclosure, you said earlier that it's material to you whether or not the proponent has engaged the company, and that you inquire about that. Why is that so?

MS. JOFFE: Well, really it's because for us, I mean our view is that shareholder proposals should be a last resort in terms of engagement or it should take place only in very egregious situations. But I think we always want to make sure -- I certainly do, I think my colleagues do as well, but as I deal with the Americas it falls on me mainly.

I always want to make sure that the proponent has submitted the proposal for what I would consider to be a valid reason that emanates from a position of responsible ownership, caring about the long-term performance of the company. And oftentimes I do get information that leads me to believe that that's not exactly the case, that there are other angles or motives behind the submission of the proposal. And that really causes me a lot of discomfort.

So that's why it's material. And I would say that I think we would also support more disclosure as to the
identity of the proponents, what their interests are. I just question how that could be regulated because when I talked -- last year, there were several proxy contests, for example, and I would speak to hedge funds who had submitted their own slate of directors and always the answer comes back, "of course we're in it for the long-term, and we've got a huge skin in the game because we have six or eight percent of the company." But how do you know as a fellow shareholder if that's actually true, and how would that be regulated?

MR. WHITE: I think we're pretty close here to coming to our conclusion. But Bill, could you just comment on the disclosure point before we go to the concluding statements?

MR. MOSTYN: Well, I think if you raised the threshold level to five percent you'd probably solve your problem anyway. The fact is that a lot of these precatory proposals you know what the objective is, you know who's behind it. I don't think at a lower threshold level you're really going to add a lot to the equation, honestly.

MR. WHITE: Why don't we move to -- I guess we'll call it the closing remarks. And Rich, we'll start with you and then move down the table.

MR. FERLAUTO: Sure, thank you. I think this was a very interesting panel and I thank you all for the opportunity to be here.
I just want to put this in context a little bit, and that's why -- I think that we're not as far apart from the business community as they may argue that we are. You know, we're long-term shareholders, and that we're concerned about the power of long-term shareholders who will be holding the company primarily through index funds or just because of the diversification that we need to be appropriate fiduciaries for a very long time, and that we'd want to be able -- but there are a lot of us out there, too, so we've got a collective action problem at the same time.

We don't want to be disadvantaged by the short-term manipulators that may be -- you know, a hedge fund or an arbitrage or somebody who wants to short the stock or somebody who's engaged in empty voting in some way. And I think those are the real issues or problems that are out there, so that we're looking for -- and they've got the resources, obviously, to put together an eight or nine percent position in a very short term and flip that around and try to create specific value that goes to them and not broadly to the rest of the shareholders.

We're looking for power, frankly, for long-term shareholders, so that the materiality question may actually be "are you committed to the company and are you committed to long-term shareholder value?" And I think the best way to reflect that is rather than trying to get into my brain,
Bill, and figure out what our motives are here, is is that reflective in holding of the stock for some period of time. So I would make that a test and I would suggest to you that that should be the right materiality test. Are you in the company for a year or two years or three years or whatever might be appropriate? And if we're concerned about the long-term shareholder value aspect I think then the concerns about leverage and all that other stuff sort of disappears because we're looking for value, and the other issue again is the collective action problem in terms of putting together groups of shareholders.

You know, there's a very significant cost to that, so that any threshold for proxy access or anything else, even if it's one, two or three percent, is fairly significant. And then even through proxy access -- I mean there's a proxy access proposal coming up next week at United Health -- is the cost for engagement there are still fairly substantial so that there is skin in the game even around promoting those types of processes.

So again, I don't think we're looking for broad reform in any of these rules. What we're looking for is much more specifically dealing with the rights of shareholders regarding the access question and the nomination question. And the way to deal with that is through clarifying I-8. I believe the second circuit has already done that, and by
codifying the second circuit decision in some way, that I-8
relating to the election of directors for the purpose of
creating a process would be totally appropriate.

And that will deal with your problem rather than
trying to reinvent a proxy process that can open up a
Pandora's box that nobody wants to go towards.

Thank you very much.

MR. GOTTSEGEN: Thank you again for the opportunity
today.

In my view, as I've tried to emphasize, many
underestimate the work of the board and management and the
considerable resources used to manage this one corner of
compliance. Using my own company as an example, currently a
shareholder needs a pen and some paper and about 50 shares
and he can grab the attention of management, grab the
attention of the board, he can compel negotiations, he can
appear on the proxy, at the meeting, and force a vote on
serious issues or, at best, simply require the corporation to
use limited resources in the case of a frivolous proposal.

I think currently there's an imbalance as boards
attempt to budget time and resources between compliance and
regulatory matters and most importantly their primary job,
which is to manage the business of the corporation. The
balance, I think, could be restored to some degree by
amending and strengthening certain sections of 14A-8 without
diminishing the rights of shareholders.

Thanks again.

MR. HIRSCHMANN: I want to join in thanking the commission and the staff for allowing me to be here and frankly for the way in which you conduct these roundtables. We were joking before the session that if Congress helped prepare people as well as the commission staff does that people would look forward to testifying before Congress.

And I'd like to begin really my final comments where you left off, Jonathan, which is that cost is really about more than dollars. Even cost, I would hope we could all agree that companies should only spend money where it provides a return, where there's some value to it.

But you know, the time, no matter how well paid a CEO and the board directors still have the same amount of hours in a week as in a smaller company. And the management time point I think is a very fundamental point.

So the question I would in conclusion ask the commission to think as they look through these issues is how is the leverage used today? Is it being used responsibly by everybody? How do you prevent its irresponsible use? What is ISS's role in this process, and if you're going to make additional changes, what is needed in terms of reforming ISS's role?

How would additional powers be used? Would they
lead to factious boards that might not function the way Sarbanes-Oxley intends boards to function or would they really be used as leveragings, which case, even though the underlying proposal may be valid and supportable, how do all shareholders know that when they get into the private room what's really being asked is something that is not in the interest of all shareholders? And if you give groups of shareholders more power, how do you ensure that you're not disadvantaging shareholders in that process?

MS. JOFFE: I also would like to thank you for inviting me to participate in the panel. I think it's been very useful to hear what everybody's views are. Our view at Hermes is that as long-term shareholders we're on the same side as management and boards of directors. We all are looking for the same results of improving value.

With respect to the U.S. situation, we'd really like to advance the idea of extended accountability rather than the creation of more rules. And I think it was in the first panel discussion where Mr. Underhill took part, talking about the rights that exist in the U.K. and also for that matter in many other jurisdictions. It's very difficult to just import those rights into a different context, and I certainly recognize that.

That being said, I do think that, again, if you do -- and as you said at the beginning, Marty, that if you do
give shareholders more rights there's less likelihood of
actually needing to use them. And so I think going forward
that would be a way to address a lot of these concerns. You
would cut down on the resources that companies have to
expend, which we would certainly be in favor of, in dealing
with shareholder proposals. You would address many of the
accountability issues that smaller investors have and open up
the process more to them and diminish the costs that they
undertake to participate with a louder voice.

MR. MOSTYN: Thank you, Mr. Chairman, commissioners,
John and Marty. Just a couple of brief comments.

I think that the system generally works pretty
well, and to address an issue that Rich has raised, which I
think is really the subject for another panel, at least in
the current system we spent about four months, we dedicate
resources in my group to about four months of the year. If
we were to expand that, I'm not sure what the costs would be,
but it would probably be a lot more.

The advantage that the system has to us is that
it's predictable. We can estimate the kind of resources that
we need to dedicate each year to this process. And we budget
for it and we go on with it.

If we were to make substantial changes, especially
where you can allow access across the board, 12 months a
year, I think that that would have a significant impact on
use of resources.

Most of the precatory proposals that we get are really not intended to add value to the company. They're not interested necessarily in allowing us to achieve our objective, which is to earn money for our shareholders. There are many social issues and many other things.

I'm not saying that that's a bad thing. I'm just saying that that's what we get. That's what most of the issues deal with, and that's what we dedicate our process to. I'm not sure necessarily that that's the correct model. I don't think that was the original intention of the corporate model, but that's what we have today.

In terms of access to the proxy statement for director elections, I think the system is not broke. I think that if a sufficient number or larger shareholder, somebody who has more skin in the game than some real small shareholders are interested in nominating their slate of directors or a short slate, I think that that's not an expense that's going to be prohibitive.

In fact, I think the original, if I recall the original proposal in '03 has a three percent threshold representing shareholders of about three percent. Well, if that applied to the Bank of America, you'd be talking about approximately over 140 million shares of Bank of America stock. I submit that anybody who has the money to buy that
amount of shares of Bank of America stock has the money to
run their own directors slate.

And finally, in terms of materiality, I think that
would be difficult to do. I just can't understand how we
could verbally deal with this issue. I think that you'll
have a lot more problems at CorpFin trying to define this
issue and dealing with this issue than you already have. I
think maybe the best way to do it is to have a proper
threshold level.

Thank you.

MR. SILVERS: Again, like everyone else I express my
gratitude and thanks to the commission and the staff for
being here, for inviting me. This discussion is happening
because there is this long-term question that's been around
as long as the commission has been around as to how
shareholders, how investors should be able to participate in
director elections.

And this issue took on enormous importance when
there was a broad understanding in our society after Enron
and WorldCom that it really, really mattered whether you had
independent, tough-minded people on boards or you didn't.
And while it's true that some investors, particularly
short-term investors with large holdings in companies have a
history of running short slates, it's also true that the very
long-term investors, the very people that everyone here
agrees ought to be in the driver's seat so to speak in terms
of governance and accountability, do not have such a record.

The reasons for that are complicated and there's no
time to go into them, but really what we are talking about
here is creating -- hopefully creating mechanisms so that
long-term investors can ensure that there are individuals on
the boards of large corporations that all of our wealth and
prosperity depend on who are going to really look out for the
broader interests of those long-term investors.

Now there are two ways of doing that that I can
think of. Maybe there's others, but there are two ways
basically. One is the approach the commission took in 2003,
which is a mandatory rule for all public companies that tries
to put that power into the hands of long-term holders, three
percent, two-year holding period, that kind of thing. The
other way is to let the corporate governance process through
the shareholder proposal process work to bring those
proposals forward and to have them debated and to have
whatever works come out of that process.

That's the 14A-8 proposal. In effect the idea of
allowing all binding proposals to come forward under 14A-8
facilitates that idea. As I've said earlier investors I
think are open to either way. It's not -- and there are
advantages to either way. And different investors depending
on who they are would tend to lean one way or the other.
It's extremely important that the commission and the staff allow one or the other to go forward. And today one, the voluntary one is going forward under the AIG decision.

Allowing that to continue or having a different but equally viable and real way of doing it is a critical, critical task for the commission at this time. But in doing so, and this is the last thing I'm going to say, in doing so I think the commission has heard from this panel in different ways.

There is no broad support, and there is bitter and there would be bitter and serious opposition to undermining something somebody said a moment or two ago, which is that in our society, under our securities rules a small investor can, with a pen and paper, bring a serious and important issue before their fellow investors.

In this respect we are fundamentally different than other major capital markets that don't have that, and I would submit that if there were a lot of people listening, if we filled this room with Americans and if we filled this room with Latin people who vote and the people they elect to office, they would say that that is a fundamentally positive aspect of our system, reflects our core values.

And I would say that most investors believe that although they don't do so exactly with a great deal of -- it
doesn't thrill them, particularly late at night in March, 
that the staff of the commission has done an outstanding job 
over the years in sorting out which of those issues that 
small investors bring forward are really important, serious 
issues that the companies ought to have -- that other 
investors ought to hear about and express an opinion on, and 
those which aren't.

And the judgment of companies as to what is 
important and what isn't, the judgment of management as to 
what is important and what isn't, the judgment of management 
as to, say, for example, was Bophol important, slave labor 
important, is global warming important? It should not be the 
last word.

MR. DUNN: Okay. Thank you all very, very much. I 
will say one last thing, which is obviously in the 
shareholder proposal process people have very strongly held 
views across the board and I very much appreciate you all 
willing to come up here and listen to each other and express 
each other's views, and I also want to appreciate everybody 
involved in the process for how well you all treat us during 
the year.

On the staff side of it, truly we say no to one of 
you every time and you all are very respectful of that and 
you are very good to us and I appreciate that. With that, 
I'll turn it over to the chairman to wrap up.
CHAIRMAN COX: I just want, on behalf of the commission, as you can see we are all here because we are all intently interested in this subject and we are actually very committed to moving on this particular topic this year, so your appearance is very timely and very, very helpful to us.

I want to make a suggestion for the next panel. We have scheduled a 15-minute break so that this panel would end at 10:15 and the next one would begin at 10:30. We got started late, and we appropriately extended the time for this panel, but I'd suggest that we move immediately into the second panel.

It is a holiday weekend. I appreciate people being here. A lot of people made travel plans to be here and join us. So that will help keep us on schedule.

So to this panel, our very, very heartfelt thanks for your exceptional preparation and contribution to our thinking on these topics.

(Break.)

PANEL TWO - PROMOTING COMMUNICATION BETWEEN SHAREHOLDERS AND THE COMPANY

MR. DUNN: Okay. I think if the commissioners are ready I think we'll get started here. As long as that break took, I'd hate to imagine how long it would have taken if we'd taken a 15-minute break.

We're going to start with our second panel here and
try to keep moving here because it is, as the chairman said, the day before Memorial Day and we'd like to get everybody out before rush hour.

The next panel we're going to talk about is means to promote communication between shareholders and the company. Before I get into the substance, I'd like to thank our panelists, and I'll introduce them. At the far end is Evelyn Y. Davis with Highlights and Lowlights. Next to Ms. Davis is Russell Read from CalPERS; Amy Goodman at Gibson Dunn who was with us earlier this month and was kind enough to come back, I appreciate that; Nell Minow from the Corporate Library and possibly moviemom.com if I just heard, thank you, Nell; Bill Mostyn, who has been kind enough to pull double duty today and will have totally different views than he had on the last panel; and to my right, Gary Brouse with the Interfaith Center on Corporate Responsibility.

Thank you all very much for being here. The last panel was very useful, and this is I'm sure going to be as useful on a slightly different topic.

And what we want to talk about, when we were at the last roundtable there was a good bit of discussion about nonbinding proposals and the benefits that they can bring to effect change and to get shareholder views. And the current proxy rules as everyone knows under 14A-8 has the subject matter exclusions. And so some of these nonbinding proposals
are required to be included in the proxy and some are not.

And what we want to discuss today is means by which you could use technology to provide shareholders with alternative means to communicate their views on these other matters or on those matters if they wanted to use the other means that way.

And the term that's been used at the last roundtable and we use today is the notion of an electronic shareholder forum. Is there a way for companies to establish, using the internet, a means by which shareholders can raise views and interact amongst each other, God forbid, without the proxy process getting in the way, and actually raise consciousness about a number of views, both those that would go in the proxy and those that wouldn't.

And so we're going to address the potential for that on this panel, and we're going to address what the commission would need to do to make that useful, to motivate its use and go from there. I'd like to start by asking Nell first and then after Nell is finished I'd like to turn to Ms. Davis to get the final view on that, but is the notion of an electronic shareholder forum something that would bring attention to management. Is it something that shareholders would use? Could it be effective as an alternative?

MS. MINOW: No question. I would not use the world alternative. I'd use the word supplement. But I think no
question that it could be effective. I think the most
important way that it could be effective is not as much in
the shareholder proposal forum because even I do not want to
have perpetual shareholder proposal day for the entire year.
But perhaps with regard to contested elections where we could
say that just the notice to the company would be deemed
notice to the entire shareholder group for the purposes of
the broker votes, and then the company would simply in its
proxy materials refer to the web site of the people with the
contest or the people with the proposal because of the word
limit, and I would love to see that involved.

Some years ago I got a call from an unhappy
shareholder who said that he and the other shareholders had
been complaining on the Yahoo! message board about what a
lousy company it was. And the employees were there giving
even more information about what a bad company it was. And
he said, so I asked everybody how much stock do you have, and
they had 40 percent of the stock on the Yahoo! message board.
So he said, now what do I do, I've got 40 percent of the
stock.

And I said, okay, hang up, call a lawyer, have the
lawyer explain to you what a 13D filing is, and then call me
back. And I think that's really going to be the challenge
for the commission.

I think that there are electronic shareholder
forums out there. They're called Motley Fool and Yahoo! and chat rooms and all of that. The challenge for the commission is how you're going to adjust to this new reality and allow for this free discussion and encourage participation particularly by directors as well as management without getting into the kind of mess that triggers these filing requirements.

MR. DUNN: Ms. Davis, if you'd like to follow up on that, how do you think people would use it?

MS. DAVIS: I think it's preposterous. I'm Evelyn Y. Davis. I'm editor of Highlights and Lowlights. I have been giving shareholder proposals for 40 years, and the reason that I am still around while others fall by the wayside is I know when to stop. I don't go too far like people who want to nominate a director.

I mean this is preposterous. What you do, you don't nominate a director, you work on incumbent directors and get them to your viewpoint. That's the way to do it.

I'm also the one -- the shareholders had more proposals in a friendly way. Management has agreed to do it, either with bringing a proposal or after discussions with management and they say they're going to adopt it.

Like an example, I gave a proposal on paper stock certificates to the New York Stock Exchange, and they took it up with the SEC, saying this was ordinary business. And to
everybody's great surprise, including mine, the SEC agreed with them. However I gave the same proposal to Federated Department Stores. A week later, the chairman, Terry London called me and he said, "Evelyn, I think it's a great idea; we are going to adopt this."

So naturally, I said, "fine, Terry, send me a letter," and that was what he did. And if you look on page 77 of the Federated Department Stores proxy statement, you see what happened. Very friendly, very nice. This is a sensible proposal and a commission, the SEC -- institutional investors and unions, let them elect directors and get controversial proposals advisory things on the executive compensation, which I never would attempt.

This is dumb. I mean you know that they're going to fight back. They have to use a little psychology. Try to do it in a nicer way to say you're getting paid too much and lower it. And even -- that's right, you can't put a gun to their head with those type of resolutions.

These proposals were -- system and a non-controversial thing like a piece of paper, a paper stock certificate to which shareholders are entitled to have as proof of ownership. You should never be forced to use book entry.

Now most companies have a rule that you can have a choice. If you want a book entry, fine, but if you want your
paper certificate you can have it too, and how would you like
to have your home, your car or your -- or your marriage
certificate or your divorce papers in book entry? Yet this
commission here, they wrote this that a paper stock
certificate is ordinary business while electing a director
which is extremely controversial that's done by unions and
large shareholders.

I mean what's the matter here with the SEC? While
here, everybody was here last December, last December the
same commissioners unanimously adopted a parallel issue. I'm
not a lawyer, but I know what a parallel issue is,
unanimously adopted that people had the choice of a paper
proxy.

Now why doesn't the same SEC then say that a paper
stock certificate is ordinary business and some members of
Congress both in the Senate and the House are very upset
about it? And Chris, you know who I'm talking about.

MR. DUNN: Ms. Davis.

MS. DAVIS: You know, I live in Washington. I know
too when to keep my mouth shut. Okay, I drop my comments
here. It's before the commission now. I hope that the
commission will overrule a noncontroversial thing like a
piece of paper.

All right. Now we go back to the internet. When
you let them use electronics you know what's going to happen?
You don't know what you're in there. You have established a legal way for companies to snoop on everything shareholders do and say on the internet. The current system is fine provided we have the names and addresses of the proponents.

Now to get the companies something too, what I believe in, they should go from 2,000 minimum ownership to 4,000. And above all, nobody really touched on that, the holding period should be four years for any proposal.

Now the current proxy system is not perfect. I know this better than anybody. I have been at this for 40 years, but I have had more proposals adopted of mine -- in the last three years I had 20 proposals adopted of mine. Some I had given several years. Some like the one with Federated gave, and then immediately they said, "this is a great idea."

You do things in a nice way. You get more with honey than with vinegar, but you don't put a gun to the head. And then you what's going to happen?

MR. DUNN: Ms. Davis.

MS. DAVIS: One more thing, and then I'll stop.

MR. DUNN: There's five other people up here. There are five other people.

MS. DAVIS: Okay. You know what's going to happen?

If you're going to allow these binding proposals and director elections and this votes on executive compensation, the
companies are going to go private. And now that would kill
the goose that's laying your golden eggs. The companies go
private, they don't have to pay attention to anybody. All
right.

MR. DUNN: Thank you, Ms. Davis. I was going to
turn to Russell next, but I kind of forgot what my question
was, so I'm going to repeat it.

Russell, if we did this as a supplement, would
CalPERS use it?

MR. READ: I think, as a supplement, this is a very
good idea. You know, what we've heard this morning both in
the first panel and I think in this one really reflects
something that's fairly important, that this is not a zero
sum gain. We are looking -- everyone has an interest in
increasing share -- the value of the companies involved.
The tension that arises are really two things. Too
often you can have long-term share owners who feel
under-represented in certain issues and certain
circumstances, much better today than certainly historically.
And you have companies sometimes that feel
overburdened by costs. And we look at this as a way to -- if
we can improve both of those, if we can improve the
representative nature and also have board members feeling
more responsible and representative of their share owners,
that's a good thing. And if we can reduce the burdens and
costs associated with some of the director and company communications that would be a good thing.

So we think as a supplement this is really in the right direction on those two dimensions. So again, as a replacement for precatory proposals we would not be in favor of that at all. We think that could be problematic. But as a supplement this actually might accomplish a lot of good things.

MR. DUNN: Gary, I'd like to turn to you next because the ICCR is very well known for raising a lot of consciousness on social responsibility issues. Do you think this would be a good means for that?

MR. BROUSE: You know, the -- first of all, I'm sorry, thank you very much for having me here. I really appreciate -- this is really a privilege to be here and have a voice. I know it's difficult to sit out there in the audience because a lot of people feel very anxious about having their input in this and to be up here and have that opportunity is a privilege and thank you.

The answer to your question is I don't know. This question, in preparing to come here, was asked in several different ways. One was as this as an option. The other was an alternative. I think as a possible supplement to what is currently in practice, yes, that sounds more likely because we really don't know what the impact is on the annual
shareholder meeting, the communications between shareholders and the board, between shareholders and shareholders, and then shareholders with management.

Those are all dynamics to take on different avenues. And so to have that opportunity you have to understand what is the impact on these other processes that are going on.

There is nothing greater -- I remember my first annual shareholder meeting, and to be able to get up and speak in front of the whole board of directors and the management like that, it's such a privilege. You know, the process of voting on a particular shareholder resolution is one way of voicing your concerns, and then the shareholders each have a vote too that they can express their concerns.

These are all expressions, and this just seems another opportunity to do that. The question is how will it impact the other processes.

MR. DUNN: Amy and Bill, I want to ask in whichever way you want to go how would companies view this and what would be needed to motivate them to move toward it?

MS. GOODMAN: I'll leave it to Bill to answer the individual company response, but I think it's important to lay some groundwork here in terms of background when we talk about communication between companies and their shareholders, boards, management, shareholders, that there really has been
a sea change over the past five or ten years in the level of communication that currently goes on. Shareholders and boards and management are talking quite frequently today. In fact, I've heard from some institutional investors that say I wish these companies would stop calling me so much. Because I think companies do recognize and directors recognize the interest of shareholders on a lot of these issues. Just over the past couple of years, the Council of Institutional Investors and the National Association of Corporate Directors as well as the Business Roundtable have put out publications on guidelines for enhancing communications between directors and boards. The New York Stock Exchange listing standards require companies to provide a means for interested parties, not just shareholders, but clearly shareholders and other interested parties to communicate with the independent directors as a group or -- and many companies provide a link on their web site for direct communications board members and a site from corporate secretaries weeding out solicitations and resumes. That information goes on to the board. Frankly, there's nothing that gets my clients more annoyed than receiving a shareholder proposal where the proponent has not contacted them before to say what their concern is, on the theory that companies want to hear what
the concerns are. CalPERS, for example, several years ago was concerned about nonaudit services, more recently concerned about compensation consultants doing work for the company beyond that of the compensation committee. These are concerns that companies want to hear about, and many of them get taken care of even before the proposal. And then once the proposal is submitted, many are withdrawn, as you know, and I think the numbers are increasing each year because companies and shareholders have that kind of dialogue.

So, I think there are mechanisms in place for that dialogue to take place, and I'm not quite sure what this forum would add to that.

MR. MOSTYN: First of all, for the record, I agree with everything that Ms. Davis said. I hope I don't get another shareholder proposal next year as a result of that.

MS. MINNOW: You may get one from me.

MS. DAVIS: You mentioned my name. I'm a very good friend of your CEO, Ken Lewis.

MR. MOSTYN: Yes, ma'am, I know that.

MS. DAVIS: Very good friend of mine. So, watch what you're saying.

(Laughter.)

MR. MOSTYN: You know, some of things that Amy said are absolutely correct. There is a growing amount of
communications between companies and their shareholders. I
think a lot of companies now on an annual basis if not more
frequently make sure that they at least have meetings with
their larger shareholders and spend time talking about
governance issues.

I think the issue here probably is more of the
smaller shareholder, the individual shareholder and giving
them an access to some way of communicating. But they can do
that anyway. They can write letters to us. And I know when
we get letters, we pay attention to them. I personally
respond to every shareholder that writes to me, writes to our
company. And if it's an issue that I think I need to run by
the board, I'll do that. So, I think it's already there.

My concern, and I'm getting more concerned now as I
hear other members of the panel talk about this issue is that
it's going to be viewed as a supplement, and basically I look
at this as a parallel operation, which is going to tie up
more of my resources maybe all year long dealing with this
issue.

So I just -- and I think that -- I suspect that the
individual shareholders will probably not accept this as an
alternative unless there's some clout to it, there's some
meaning to it. You know, it has to get heard, there's going
to be a vote on it or something. And in that case, it does
become a parallel system, and I'm very concerned about that.
MR. DUNN: Let me ask one specific thing then. If there was some notion in this that this was truly set up by the company but not something that the company monitored or was responsible for, that may impact the extent to which shareholders wanted to use it, but would that put your mind more at ease about the resources point?

MR. MOSTYN: Well, in that case, would the purpose be to communicate with the company?

MR. DUNN: Well, it would be to communicate amongst shareholders, and to the extent that it rises to the company's level of interest, then yeah.

MR. MOSTYN: Okay. Well, if there's communication among shareholders and a significant number of shareholders have an interest in an issue then bring that to the company, I think that's a good system. I have no problem with that. If I was CORPFIN, I'd be concerned about this, though, because you're going to end up with a lot of stuff out there that's potentially misleading. And, you know, you're going to have a lot of issues to deal with I think if that occurs.

MR. DUNN: That was actually my next question that I wanted to ask everyone. Would there need to be something in this that made very clear -- and give you some alternatives and everybody can jump in -- would it have to say you can't talk about stuff that's on the proxy because then it might be a solicitation? Would it have to be that
anything on there is not a solicitation ever regardless of what you're talking about? Everybody realizes what it is and what it's for and it sits there. How should we deal with exactly the issue that Bill just brought up?

And since Nell went first and hasn't spoken in a while, we'll go to her to start and everybody can jump in.

MS. MINNOW: Well, first of all, I think it's absolutely essential that everybody have to have their identity disclosed. I understand that there are some advantages in some circumstances to anonymity, but I don't think that that would work here.

But I also want to say that, as I touched on in my initial remarks, I think this is one thing the market is handling very, very well. And I particularly like the way that the Motley Fool approaches it, where participants rate each other. And so you know when somebody is a crackpot or you know when somebody is a pump-and-dump guy because nobody ever listens to him, and so you have immediate credibility for the people who are posting.

Now as for your proposal that we just say, by the way, no matter what I say here, it's not a solicitation. You know, Abraham Lincoln used to say how many legs does a cow have if you call a tail a leg? And the answer is four, because calling a tail a leg doesn't make it one. And you can say it's not a solicitation, but if you're saying I know
it's not a solicitation, but by the way, I really want you to support my proposal, it doesn't really do any good.

So I think the main thing here is you want to look to what is already happening out there in the marketplace. I think that, as I said, the system of creating credibility for particular posters has been very, very -- the SEC should do something near and dear to the heart, and that is making all the public disclosures Internet friendly in such a way that they can be imported easily and looked at and discussed and benchmarked so that that will provide a good basis for the conversation.

CHAIRMAN COX: I just wondered, on your anonymity point, if you could explain your thinking.

MS. MINNOW: Sure. I think there is a lot of appeal to the idea of anonymity in order to encourage frankness and freedom from reprisals. On the other hand, there are a lot of nasty people out there who are not clear about their motives and who I would not want a hedge fund manager to hide behind anonymity when -- as he was, you know, shorting the stock.

And I think it is important for -- and one thing that bothers me right now about the current SEC rules is that companies need not disclose the name of the proponent in the proxy. They have to tell you if you call, but they don't have to put it in the proxy. And it infuriates me. I once
had a proposal and they left my name out. I wanted my name on the proposal because I know people in the shareholder community and I think my name adds a lot of credibility to my proposals.

So I think that in the -- because of the sensitivity of the material and because of the motivation of bad actors out there, I think that outweighs the appeal of the protection of anonymity.

CHAIRMAN COX: And so you're not motivated by a concern for restricting the conversation to shareholders, even if it were restricted to shareholders, you would still want there to be a --

MS. MINNOW: Yes. I thought about that a lot, because I knew that was one of the issues that was going to come up today, and it is not -- it's not an easy and obvious answer. But I've decided that in my opinion, it does outweigh the benefits of anonymity.

MS. DAVIS: Okay. On this proposal here, if you're going to use the Internet it's like taking a shower in public. Anybody can know what you're going to do. All the companies are going to -- don’t think anybody cannot get into your computer. Hackers and even terrorists, anybody, they can get even in the most sophisticated government computers. They know everything you're doing. Everything you're doing.

Now I have given report, but the thing is, they
have the names of the shareholders and the addresses in the
proxy statement. I get about 40 stockholder proposals each
year, and many years ago, many left my name out, you know.
Now it's only one place, Pfizer, where they don't have my
name but they said they'll get the name of the proponent, you
know, and the address upon request. Okay. That can be done,
all right.

But even where the name is not used, then the name
they can get -- of course, it's much better if they use it
like they do, you know, it's why not? What's the secrecy?
And then by telephone, all right. I got many phone calls
about my proposal. So you know what I do? I say, well, you
don't know who is calling you. A lot of employee
shareholders call, and they want to know just what are you,
you know, particular about my political contributions,
resolutions and some other, I say, well, I thank you very
much, I said, you can send me a letter with your particular
questions with your name and address, I said, but I cannot
say anything else about my proposal except what's in the
proposal, so that nobody ever can say that I'm trying to
solicit proxies. I've never asked anybody to vote for my
proposal.

Sometimes when I lecture at universities or other
places or recently before my neighbors, I always say read
your proxy statement, read the proposals, vote yes or no, but
don't abstain or in some cases it would be voted against. But I don't even ask anybody ever to vote for my proposal, even my own neighbors. I said just read it, do what you want to, but read it, and don't abstain. Vote for or against. The education thing, I said. But no way ever -- I've been at this for 40 years, so I know what I'm doing. If anybody thought I was soliciting, I'm sure they would have heard about at the SEC. Nobody considered.

But like I say, this is just a means for the companies to see everything you are doing when you have anonymity. I don't use e-mail either. I tell you why, because remember Spitzer, you know --

MR. WHITE: Ms. Davis, can let Gary make a comment here?

MS. DAVIS: Yeah, yeah, yeah. Yeah, yeah. Just let me finish here. And the same thing, I don't use a word processor. I'm not a perfect typist. If I have to have something done, I have somebody do it for me if it has to look real neat. But my typewriter, nobody can get into.

MR. WHITE: Ms. Davis --

MS. DAVIS: But your word processor, anybody will know what you are doing. So this is outrageous. And let me tell you another thing, okay.

MR. WHITE: Ms. Davis --

MS. DAVIS: One more thing. One more thing.
MR. DUNN: We need to move.

MR. WHITE: We need to move. Gary would like to make some comments on this.

MS. DAVIS: Yeah, yeah. But I want to -- may I have one more? One comment on this, please, John?

MR. WHITE: We'll come back to you before we're done today.

MS. DAVIS: All right. All right.

MR. WHITE: Gary?

MR. BROUSE: Thank you. I just wanted to add something about the Electric Shareholder Forum issue, and I still don't know what the impact and the implications are going to be on this. But the other thing I was just thinking was is that before we go to a company to ask a question or address an issue, we spend a lot of time researching it, going over the questions, the concerns. And we're not about, you know, wasting the company's time, the management time in addressing particular issues, this might, you know, with just a lot of gab going on.

I think there needs a component in there where it makes whatever questions or whatever you want to address, that there's some responsibility behind it, that it is well documented and the interest that you have in the company and the stockholder's value in it is there, too, in that component. And that process we go through to go to a company
and contact them, we take a lot of that under consideration. You know, you have to wonder in this process, how is that going to ensure that the questions and the conversation are going to be quality and they're not going to be a lot of wasted time? Thank you.

MR. DUNN: Russell is next, and we'll get to Bill after that.

MR. READ: Thank you. I think there is a bright line standard here that actually could and should emerge. There's a principle involved regarding a share owner forum, and that is, you know, you're looking for the directors for the company to be responsive to the interests of the share owners. I think -- I'm definitely in the camp that for a share owner forum, that it should not be anonymous. That would not be -- it does not facilitate the board or the company being more responsive if they see something that is anonymous.

If it's a different forum, for instance, if it's a public relations forum, an electronic public relations forum, a PR forum, which could also be useful, but wouldn't necessarily involve share owners, I think that probably could and should be anonymous. There are different folks, different issues raising issues that could be important from a public perspective, that could be another useful type of forum for the company. But with regard to -- restricting it
just to the share owner forums, I think that should not be anonymous.

CHAIRMAN COX: Before you pass off of that idea, since I want to make sure I apprehend it fully, is there anything that would need to be done to the proxy rules to have the kind of PR forum that you're talking about, or is that something that under existing law and rules you could do anyway if you wanted to?

MR. READ: The interesting question is, you know, a lot of this happens already on the Internet with some various forums. So those Internet forums themselves are pretty useful. What's missing in part can be participation from the company and from the directors. And there are probably other people who can answer better than I as to what -- as to how the companies themselves and the directors would feel restricted in those forums. But the forums themselves that are out there, such as Motley Fool and others, are actually pretty useful.

MR. MOSTYN: Just a couple of points. Actually, your last point, we -- and I think most companies generally try to stay away from the chat rooms and the blogs, because if we started getting involved in that discussion, we'd be tied up in disclosure issues and liabilities and that sort of thing. So we try to stay away from that.
MS. MINNOW: Could I just ask you something? I'm sorry. Can I just ask you, when you say stay away from it, you mean you don't read them or you don't respond?

MR. MOSTYN: We actually probably don't even read them, for the most part. There are some people that do, but I think that we generally don't read them. Just getting -- there was an example actually that is relevant here in terms of what might occur.

When Sarbanes-Oxley was passed, and then the New York Stock Exchange listing standards were adopted, the new ones, they required a communication vehicle to get to companies. And some of the companies that want to get out in front of this issue set up web sites for that purpose, and some of the experiences that those companies -- and they were pretty big companies -- were horrendous. I know one company in particular that had to hire a staff of people to sort of address these issues.

And that kind of volume concerns me a lot. And even if it was restricted to shareholders, I think that you might get -- I'm really anticipating more volume, because it's just easier to deal with the stuff when -- on a key on your computer than when you write a letter or make a phone call to a company.

MR. DUNN: Amy, if I could --

MS. DAVIS: Yeah. No. Okay. This is absolutely a
lot of nonsense, because you have no control as a proponent that way, and you don't know -- like I say, you're going to get company employees acting like individual shareholders. You get special interests and anonymity while otherwise and you have the names and addresses of proponents. You get letters, fine, so you know who is writing and all that. And you can pick up the phone, talk to them or not talk to them, and a lot of mail I get from people, too, they just say, well, thank you, Mrs. Davis, you're doing a great job. We support you in that.

If they ask specific things why I have a reason to get this at a particular company, I don't go. I just say this is what is in the proxy statement. This is it. And they should be -- nothing is perfect, but the current system is working. Just like I say, and you work -- incumbent directors, they are not like -- I had in a friendly way, I had two years ago a problem with the bank --

MR. DUNN: We --

MS. DAVIS: Now, look. You didn't interrupt Nell either. You're showing favoritism to Nell.


MS. DAVIS: Well, that's -- I'm not a lawyer. I'm sorry.

MR. DUNN: No, no. It was only -- I only cut in
when you started repeating yourself.

MS. DAVIS: Well, I'm sorry if I do that. But, like I said, the present system, it's not perfect, okay. But it is working. But I want to have also that we don't have in-and-out traders a four-year holding period for anybody to give a proposal and at least a minimum of $4,000 worth of shares.

Now this guy here who works for the Bank of America said the average shareholder has 5,000 shares. I have 80,000 worth of Bank of America, which is also, you know, a lot for me, but I'm not a 10-share stockholder either. And we don't have, you know, we don't have those kind of people. Four thousand minimum.

And I think that should resolve a lot of the problems, but no electronic stuff. And you cannot trust the Internet of senior citizens and small shareholders either. You have to be a computer wizard and anybody will know who contacts you, anybody will know what you are doing.

MR. DUNN: Okay. We're moving on to the next topic. Amy? For the sake of discussion, Bill has said that companies don't even look at the sites, or his company doesn't, or it might be wise not to. I don't want to put words in your mouth, Bill.

What would we need to do to change the rules to give them comfort? What is it in the securities laws that
lead a company legally -- and I know there's a money issue, but legally, to feel that it's better off just to ignore?

MS. GOODMAN: Well, I think there are questions relating to uncertainty under the law with respect to duty of update and duty to correct and to the extent that the company becomes aware, let's say there's unusual trading in their stock, I think there are a variety of reasons why companies don't want to respond to -- it's the equivalent of responding to market rumors, I think. And for all those reasons.

And as I had mentioned earlier and as Bill indicated, there are alternative ways for shareholders to make their views known to a company.

MR. DUNN: Bill, what would you think? What would put your mind at ease?

MR. MOSTYN: I don't think there is any way to do it. I mean, actually, honestly have read some blogs, chat room conversations, and I'm amazed at some of the allegations that they're making about the company. I caution people with the company not to get engaged in a communication with them about this, because it's -- you're going to go off in some issue that we're going to have to issue an 8-K for probably or things like that. And so there are lots of things that come out there, and it's just not -- it's not the right vehicle. It's not reviewed, it's not governed by any rules. I'm not sure that, you know, to try to impose a 10b-5 type of
regime on a blog is really going to work.

MR. DUNN: That was part of my question there. Is it wise to say -- to make clear that there isn't a 10b-5 regime or there isn't a duty to correct or there isn't a duty to update or this doesn't result in any company obligation?

MS. GOODMAN: Well, if the company is speaking, I mean, if we're assuming that the company is not speaking, then there's no problem. But if you want this to be a two-way street and the company is going to use this to speak, then I think it would be very hard for the SEC to give a total pass to what the company had to say.

MR. DUNN: Okay. So let's divide the question in half, then. If the company -- if it's merely from the company view, passive, and the company doesn't have an obligation to speak -- obviously, if a company ever chooses to speak, it has to speak truthfully and completely. If the company doesn't have an obligation to speak, and therefore we could find some way to come up with saying the company has no responsibility for whatever gets said on there. That's one issue. How would -- would that be reasonable?

And then the other is, if the company was speaking, what would it need?

MS. GOODMAN: Are you assuming that the company would be maintaining this forum? I mean, I think that's the problem. I think to the extent that the company doesn't
maintain the forum, then it doesn't have or feel any obligation to monitor it. On the other hand, if the company is maintaining this forum pursuant to an SEC rule, for example, it becomes hard I think both from the company standpoint and from the SEC standpoint not for the company to have some monitoring obligation and want to correct false and misleading information.

CHAIRMAN COX: I think the question that Marty's asking is ought there be a rule that makes clear there is no such obligation? I mean, in the early days of the Internet back when we had CompuServe and Prodigy, the New York Supreme Court, the trial court in New York, ruled in a libel case that someone who had said something about an investment bank, and we couldn't trade down who that person was, triggered liability at Prodigy.

And so now-Senator Wyden, Representative Wyden and I wrote a law that overturned that decision, and that's been the rule on the Internet ever since. We would do the same thing in this space so that the maintenance of the site would not in any way subject the maintainer, if it were the company or anyone else, to that kind of monitoring obligation.

MS. GOODMAN: I guess I'm concerned that you would still, as Professor Newhauser talked about on the May 7th roundtable, create a Wild West atmosphere where if there's -- that you would end up then in a situation where
nobody would really use the forum because it would become an
open Wild West where there -- I mean, I question what the
value of it would be at that point.

MR. DUNN: Rusty, do you want to -- go ahead.

MR. READ: Love to. I actually think that

protections that you could provide from the SEC in an
electronic forum would be very important. Our view is that
things that materially facilitate communication between the
share owners and the company and the directors is generally
cost effective and good, something that is -- should be
promoted. And without those protections, it's going to be
difficult to have an effective dialogue.

So I would say that if you want to have the
electronic forum be -- have effect at all and have it not
simply be a conversation among the investors, then I think
you probably need to provide that -- some measure of
protection to the company and to the directors.

MR. DUNN: Thanks. We are -- we're coming down to
the closing remarks point, so I was going to turn it over to
Ms. Davis to go first. Everybody has a minute or two, and
we'll go. Ms Davis.

MS. DAVIS: All right. I'm just -- I'm trying to
say that this whole -- I am not a lawyer, but I know darn
well if you're going to use the Internet, some company or
somebody could make a subpoena and find out who the ones were
who had these different things on the web. While if you write to a director personally or you write to a stockholder or a proponent or whoever, nobody but the proponent knows. You have the mail. You don't know -- I don't give out who writes to me, who calls me. But I'm trying to say this is open to litigation. I'm not a lawyer. But they can use that. And also at some point, the companies might -- now like I say, I've been at this for 40 years, I have seen them, the companies try to say you had to have 1 percent of the stock before you could give any proposal and that stuff. But this is not good. They could even try to eliminate the annual meeting and use these forums and then take the things they want to. And if that gets to that, I tell you one thing. I am not a young woman anymore, but I am rich. I would take it up to court, even to the Supreme Court. I have nothing to lose. If they were to try to stop annual meetings, okay, they tried to force this Internet stuff, you can't force senior citizens and small shareholders who are not computer experts.

Sure, the institutional investors have big stocks and all that, but people, if they're dumb enough to use it and get themselves -- they can find out who you are even if you think it's anonymous. Are you kidding? They can find out anything about everything you do on the Internet. Don't kid yourself. That's why I say, I don't use a word
processor. I don't use e-mail. I use my typewriter. I do what I want to. I pick up the phone. Sure, people can tap your phone, but not as much as, you know, and in other ways, and you are in control as the proponent, and that way you will not be -- and the directors are listed in the proxy statement. If people want to talk to the individual directors --

MR. DUNN: Ms. Davis --
MS. DAVIS: -- they can find out.
MR. DUNN: Ms. Davis --
MS. DAVIS: They can find out the names and addresses --
MR. DUNN: I'm clearly not in control. I'm clearly not in control as the moderator.
MS. DAVIS: Yeah, but you favor -- you favor Nell.
MR. DUNN: Oh, stop that. Stop that.
MS. DAVIS: I am prettier than she is.
MR. DUNN: Nobody -- oh, jeez.
(Laughter.)
MR. DUNN: Thank you so much. Russell?
MR. READ: I think this is an important opportunity which is going to take years to figure how to do effectively. From our standpoint at CalPERS, all of our -- well, our approach to voting proxies is all based on principles, principles which we believe will benefit -- in fact, the way
we look at principles, we only establish them if we think they will benefit companies. If they think they will add value. We think that's a proper and good way to formulate principles.

We do believe that there is -- the most important principle of all is the alignment of interests between the share owners and the companies that they are investing in. So that alignment of interest, anything that facilitates that, better communication is, you know, is generally a good thing. We view this as something that's supplemental, not as a replacement, I think for many of the reasons that were just previously mentioned, but as an addition, as a supplement, we think that there are some promising aspects here to improve the alignment of interests, to potentially I think actually reduce the costs to companies.

You know, although theoretically I think there were some costs that you could see increasing, I think in general, you know, that better communication would forestall a number of precatory proposals, frankly. I think we see that in general when we come out with our focus list of companies that we believe are troubled and not reflecting share owner interests. We engage companies very heavily. In fact, most of the companies that could be potential focus list companies end up not making the final list because we engage them and the companies respond.
So, I think the engagement process is important. This is another type of engagement process. So anything that you could do to help make this meaningful and effective I think would be a good thing.

MR. DUNN: Amy?

MS. GOODMAN: Thank you. I think what Russ just said is so important that the level of communication that is going on today between companies and their shareholders is at an incredibly high level on proxy proposal issues, an area where I don't think there's been as much communication as I think there could be, and this gets at the issue that was discussed at the previous panel relating to the director election process is communication with, for example, board criteria.

Boards under the New York Stock Exchange listing standards and under the SEC rules are now required to put in their proxy statements and their corporate governance guidelines up on their web site, lots of information about the criteria that they apply in picking out director candidates. In addition, there's a required disclosure about procedures for shareholders to recommend candidates to the governance and nominating committee. And under the new listing standards in the SEC rules, the independence of the governance committee and their whole role in the nominating process is much greater than it ever was.
But if you talk to, and I'd welcome Bill's thoughts, but if you talk to a lot of companies, they get very little input from shareholders or even large shareholders about the criteria that they have in their proxy statements about board candidates and about the people that they nominate for the board, and that's an area where I'd like to see greater communication.

MS. MINNOW: I think the great conundrum, Marty, is the one that you raised a moment ago, which is that we want companies to be fully accurate and fully responsive in all of their communications, and yet we also want to encourage them to participate in what really is the Wild, Wild West out there on the Internet. And I just don't think that we're going to be resolving that one today. That's a very tough one.

I am usually extremely happy to take up the time of corporate executives with what I think are very important shareholder concerns, and even I take pity on the idea that they would have to be surfing the net all day long to read what a blogger has to say and respond to every single thing. Because if they didn't respond to this one and they did respond to that one, it would be like conceding. I think that that's a nightmare.

I think the best thing that the SEC could do right now is focus on using the technology that's out there, as I
said before, to strengthen and make more robust the process for director nomination and contested elections and to look and monitor closely what the market is providing out there in terms of online forums for shareholder interchange and make sure that the required disclosures are very compatible with that, so that they can make that a richer experience.

MS. DAVIS: Okay. I have actually two more --

MR. DUNN: Ms. Davis, we're finishing. We're going to end. We've got to end. We're on to the lovely and talented Bill Mostyn now. Bill?

MR. MOSTYN: Thank you. I think the objective of this idea very laudable if it was to siphon off what would have been precatory proposals and put them into a different forum and basically simply the normal proxy statement process each year for a company.

But my sense is, and especially listening to the panelists today, that we're talking about a supplemental system, that we're just going to have to devote more resources to. And in that context, I don't think it's a good idea. I think it would have to be the alternative to it.

Otherwise, we'd be spending a lot of time on it.

MR. WHITE: Gary, you get --

MR. DUNN: Gary gets the last word here.

MS. DAVIS: What about me?

MR. DUNN: You went first.
MS. DAVIS: Well, wait a minute.

MR. DUNN: Gary, do you want to give us your comments?

MR. WHITE: Gary's getting the last word, Ms. Davis. We've got to end. We're past time.

MS. DAVIS: No. Well, wait a minute.

MR. DUNN: Gary, do you want to give us your comments?:

MS. DAVIS: I mean, my last words, brief last words.

MR. DUNN: I get the last word. Go ahead, Gary.

MR. BROUSE: What I wanted to do is again thank you for allowing us to be here and to be able to express ourselves on this issue. I wanted to say that I also represent the American Indigenous Coalition on Institutional Accountability, and we're sort of newcomers into the investment market.

And the one thing great about ICCR is, we have a great reputation with corporations. We don't always agree on things. We start out with letters or communications or we dialogue with the company. We go to annual meetings. And it's interesting. Sometimes we don't always agree in those dialogues, or maybe we don't have a dialogue, maybe it's a resolution that gets those dialogues started.

But the great thing is, is that I think we've
actually helped companies in heading off potential problems in the future. We've been helpful that way. Sometimes corporations even call us for assistance in particular areas and information. And that's why I think it's so important, no matter what process is in place, that the quality of the communications that takes place is really important, because we don't want to waste our time. When we do bring up an issue, we want to be taken seriously.

And it's one of the things that the American Indian community, as we get into this investment market, are looking at that model and knowing that we don't get that many opportunities to participate in a place like this or go to an annual meeting. So our opportunities are pretty limited. And we know that when we do get those opportunities, we have to make the most of them.

And I think in this particular area, people of color, you know, their opportunities are not as great as other people to be able to voice our concerns, our opinions, and to share our comments with the business leaders of this country. And we've been very fortunate in the relationships that we've been able to build with corporations as investors, as a group of people. And we appreciate that opportunity, and we would not like to see that quality of communications deteriorate in any way.

And so, you know, again, I would say that, you
know, we still have a lot of questions about this process, and we hope we're able to continue to participate and to contribute in how to make this a good process for everyone. Thank you.

MR. DUNN: Thank you very much. With that, we're going to, to use the chairman's phrase, move immediately to the next panel, which I guess means ten or fifteen minutes. We're going to start at 11:45. I'll -- I just want to thank everyone, Evelyn, Russ, Amy, Nell, Bill, for pulling double duty, Gary. I'm emotionally and physically spent, so I'm done.

CHAIRMAN COX: Thank you very much to the entire panel. And on Marty's last point, I really did intend that we'd move seamlessly into the second panel, which did not happen, so let's try and do that with the third panel so that we can get people on their way.

Thank you very much.

(A brief recess was taken.)

PANEL THREE - REVISTING THE RELATIONSHIP BETWEEN STATE LAW RIGHTS AND THE FEDERAL PROXY RULES

MR. WHITE: Okay. We'd like to get started on our tenth and final panel for this -- for our roundtable series. First I should just check. Joe, can you hear us? Joe Grundfest.

MR. GRUNDFEST: I can hear you loud and clear.
MR. WHITE: Okay. Just checking. We can see you.

MR. GRUNDFEST: I can hear you loud and clear.

MR. WHITE: But we just wanted to make sure you could hear us.

CHAIRMAN COX: Could we turn Joe's volume up, though?

MR. WHITE: Okay. Whoever handles the volume, we're going to need to turn Joe's volume up. So as I say, welcome back to our final panel. Our goal here is to build off of our first roundtable on May 7 and come back to some of the fundamental issues and look at those again in light of what we've heard in the interim.

We're very fortunate to have back four of the panelists from our first day, plus Stan Gold. But let me introduce everyone just down the line here. Jill Fisch, Professor of Business Law at Fordham University School of Law and currently visiting at Pennsylvania Law School.

Stan Gold, President and CEO of Shamrock Holdings.

Joe Grundfest, who is connected by video, Professor of Law and Business at Stanford Law School. Joe, do you want to speak to us now so we can see how you sound?

MR. GRUNDFEST: Well, good morning, everyone.

MR. WHITE: That is perfect. Thank you. Don Langevoort, Professor of Law at Georgetown University Law Center; and Leo Strine, Vice Chancellor of the Delaware Court
I'd like to just, you know, dive right in here in terms of where we're at. We obviously, you can tell from some of the things that were being discussed this morning, and the questions we've provided to the panelists, mulling over the idea that binding proposals that are permitted under state law should be included in proxy statements, perhaps with certain requirements. And we've obviously heard a lot of back-and-forth on that.

So, Jill, I guess we'd like to start with you and hear what your reaction to that is in light of all the things that we've heard.

MS. FISCH: Thank you. In light of the questions that you circulated, there were a couple of points that I was concerned about. One, I think you're absolutely right in focusing on the relationship to state law. But I wonder if that relationship isn't a little bit more complicated than our previous discussion really highlighted.

I mean, first of all, shareholders -- we've been focusing on Delaware, and in Delaware, shareholder voting rights are pretty well defined. A number of cases say that shareholders have the right to nominate directors, and shareholders clearly have the non-divestible right to amend the bylaws. But that's not true in every state. In fact, there are at least a couple of states where shareholders
don't have the right to amend the bylaws at all. That power resides exclusively in the board.

And I wonder what shareholder proposals or shareholder resolutions look like under such a system. And I also wonder what the sort of implied or residual shareholder resolution right is in a state in which shareholders don't have the power to amend the bylaws, and where that residual right comes from.

I went back and I looked at the TransAmerica case where we really kind of, where the 3rd Circuit kind of came up with this idea that shareholders of course have the right to introduce and vote on resolutions. But when you look at the state statute, it's not entirely clear to me where that right comes from, and whether states, or to what extent states have the right to eliminate that. So if that's true, then I'm a little bit confused about the relationship of this federal right with the underlying state law.

Related to that, there's this issue of what's a proper subject. And I'm not sure you get away from that with -- by restricting shareholders to binding or to bylaw amendments. There's still the residual question of the interplay in Delaware, the interplay between Section 109 and Section 141. Just because something is in the form of a bylaw amendment doesn't automatically make it a proper subject for a shareholder vote. And state law has not
addressed that question. I assume that it will. It may not
resolve that question in the same way in every state. And
then you've got an additional complication with respect to
the effect of these rules.

Third question. Interplay between the federal
right and issuer-specific rules, issuer-specific limits on
shareholders' right to amend the bylaws. Would a federal
rule prevent an issuer from having a bylaw that said you need
5 percent of the outstanding shares to amend the bylaws, or
introducing a different time period or a different holding
requirement? I think there's a lot of value in
issuer-specific experimentation.

But I assume that if there were a general federal
proxy right to introduce binding bylaw resolution, that that
would conflict, or at least some courts would perceive that
as conflicting, with issuer-specific freedom.

I don't want to take too long, so I'll stop there.

MR. WHITE: I don't even think that was playing by
the rules. I mean, you're the professor and you're just
asking questions. We were looking for answers, but thank
you.

Don, maybe you can give us some answers, as well as
your observations.

MR. LANGEVOORT. A couple of more questions,
actually.
MR. WHITE: Oh, great.

MR. LANGEVOORT. No. I agree with everything Jill said. In addition, and one thing that is clear I think in every state that I know of is the bylaws cannot be inconsistent with the charter or articles of incorporation. And I have to believe the Commission would set in motion a great degree of experimentation in charters, especially adopted pursuant to IPOs, that people buy into that will add to the difficulty of the questions of what's -- where are the shareholders going too far, given the charter that was adopted, things like that.

So, I think the Commission and its staff would inevitably be drawn into the creation of law on the subject. And we would see what we saw with precatory amendments for the last 40 years, which is the Commission supplanting state sources of authority, because it's far more actively and constantly involved in answering these questions, and it won't get answered. I mean, Jill and I can't answer your questions. We've looked at the body of law. I don't think the body of state law is going to ripen quickly, so that it's easy for you guys.

MR. DUNN: If I could weigh in on one thing. And for anyone. At the last roundtable when you all were here, Leo, you had mentioned that nonbinding proposals aren't provided for in state law, I think was the phrase you used.
And -- I didn't go back and read it. I made that up. But I think that's what you said. And the notion, though, that, you know, so it's permissive, it doesn't disallow it. You know, I've never seen any company ever write in with a nonbinding proposal and argue it's invalid under state law.

So while I think it's a fair question, and of course state law could be changed to make it not permissive -- not permitted, it's fair to say that, although it's an open question, it's kind of an open secret that it's fine. Would that be fair?

MR. STRINE: I think what I said the last time is this. Delaware is not -- I mean, I am not John C. Calhoun. I hope that's obvious to everybody, interposition and nullification, not my thing, not my state's thing, and it's a federally mandated process.

What the statute says is that you can come before an annual meeting and you can bring up anything that's proper. Right. Yeah. You can go to the annual meeting, hopefully it's not on the Internet, it won't be traceable. I'm a little concerned that my remarks are traceable now because of the Internet connection I saw. But I'm proceeding nonetheless in the assurance that it won't be.

But the idea of the mandated vote on a matter that's not binding, no one -- where is there a court case that says I stood up at the annual meeting and I demanded a
vote. The chairman said I could make my remarks, but I'm not having a vote on it because it's not a bylaw. And then went to a state court, and the state court says as a matter of corporate law, yes, you have to put it to a shareholder vote.

The shareholder vote on these nonbinding things is a result of federal action. We're not John C. Calhoun. We don't care. You're regulating the proxies. As a matter of the proxy rules, you have created something. And that was one of my points about your proposal. You're not vindicating a state law right.

The difficult thing for the Commission that you're grappling with is a history of -- and it may be a Machiavellian kind of conservative idea here, which is to diffuse energy around social issues into a forum dominated by capital, right? Which is, we're going to diffuse energy that might be directed to Congress into a forum where capitalists have the vote. And I say that kind of whimsically, but there's a certain amount of truth to that, right, which is that nobody under business statutes ever invented this process. It's an outlet.

It's not clear to me as a normative matter, for example, why with respect to a lot of the issues that Damon talked about, which are issues that are close to my heart, you know, that I can't really express in my current job, why workers wouldn't be able to make such proposals about the
employment, you know, practices of an American public corporation. The idea that you have to buy shares in order to open the gateway to federally mandated communication is an odd thing, or community, for example, people who live in a community affected by the environmental practices of a corporation.

Why is that they would not get -- if this is what this is about, it's a conversation about larger issues of social responsibility, the question -- the nexus to security ownership seems to me to be an exceedingly trivial basis as a gateway. And so what I'm saying, Marty, is, I think under state law, you can go to a meeting. The annual meeting has an outlet purpose, and you can stand up and say something. And you have to -- it's like what we have to do as judges with most pro se litigation, right? Some of it's useful. Some of it's just the medicine you take as part of the job. But this idea that you get a vote on it is a federal creation. There is not a body of state law.

Now I'll finish with this about the real issue, which is the bylaws. What I heard this morning a little bit, and I think what we need to talk about, a very difficult political issue for the Commission to shut down something 50 years old. I heard institutional investors saying they wanted more of the real stuff, but no reduction in the stuff that's less business-oriented and less meaningful. I heard
the business community say, we'd like to get rid of the
imaginary stuff but no more of the real stuff.

And I think the real conversation we need to have
is what is the balance? Who is going to strike the real
balance for the ordinary investor? Which is, what is the
right mix here? And that involves some give-and-take on both
sides. And I think that the business community's desire to
gag bylaws about the election process to me doesn't have the
ring of credibility, but nor does this idea that we want on
the investor side to have more influence over who is a
director and over bylaws, but we're not willing to give up
anything on the other side of the equation and allow the
people that we've now elected to face some of these choices
without a flurry of precatory proposals.

MR. WHITE: So, Joe, you're here on the big screen.
Everybody can see you throughout the auditorium. Would you
like to give us some comments?

MR. GRUNDFEST: Thank you very much. I promise no
special effects from Silicon Valley. Let me agree violently
with the comments of all of the panelists to this point and
suggest that, at least in my view, they point in a consistent
direction.

First, let's call a spade a spade here. What we
have is a set of federally mandated communications. And in
addition, these federally mandated communications are subject
to federal content regulation. We have employees of the
federal government looking at the content and deciding what
goes in on a content base and what does not go in on a
content base.

Putting aside for the moment whatever
constitutional issues might be implicated by that fact, it is
from my perspective not the best place for the federal
government to be, to simultaneously be compelling speech,
compelling the use of corporate resources with regard to the
making of any speech. And here I speak without any view with
regard to the substance whatsoever -- and then having the
government in the middle of the situation acting as though
they're the editor of an op ed page, saying we'll accept this
piece, we won't accept this piece. And very often, it has
nothing to do with, you know, the number of shares you hold,
how long you've held them. It's we don't like the way it's
written or we don't think that what it says is appropriate.
A highly questionable role I think for the federal government
to be in.

And then with regard to all of the excellent
technical questions that have been raised by my colleagues,
it's clear that the Commission is not in the best place to
resolve those issues, and it's also clear that if the
Commission were to attempt to resolve those issues, it would
become ensnared in a wide range of difficult questions where
it has no comparative institutional advantage, and would be
certain to come up with a set of principles that are
simultaneously over-inclusive and under-inclusive and
unlikely to really achieve the best objectives of a large
number of corporations.

So, you know, for that reason, I think the
suggestion by Professor Fisch, which is very simpatico with
my own, which is, let's figure out some strategy for
devolution of this authority to individual corporations so
that the corporations and the shareholders that have to live
with the rules that are adopted are actually the ones that
adopt the rules governing access to their proxies and
defining the material that will actually be on the proxy.

In other words, I think the Commission needs to
come up with a strategy that gets the Commission out of the
14a-8 business and puts the individual corporations and their
shareholders in the business of defining what will and won't
going on the proxy, and to the extent that there are questions
of state law rights of access, aren't the state
laws -- aren't the state courts the appropriate venue for the
resolution of those issues?

I don't know that I want people in the Division of
Corporation Finance wearing Justice Strine's robes and
opining on matters of Delaware law. That's it.

MR. DUNN: Well, I wouldn't fit in Leo's robes,
but --

(Laughter.)

MR. DUNN: It's a very tough spot, I agree with you on a lot of those things. Stan, you were going to speak for a second. How do you view this whole thing?

MR. GOLD: First of all, let me thank you for, one, inviting me to be a part of the panel. I've read the earlier transcript, and it's an illustrious panel, and I'm happy to be here. Thanks to the chairman and the Commission for inviting me.

Let me -- I think I do agree with most of the remarks this morning, but let me approach it at a different way and share with you some of my experiences, because I don't know, as all the professors do, all of the rules and regulations of various states and even the SEC rules.

In the end, it seems to me that the Commission wants to have the best companies, the most efficient and effective companies. We have a series of state laws, and there may be some exceptions, that say we give great latitude to directors who can take some risks, can do lots of things. Don't have personal liability. Can't bring a business judgment rule, unless you're in real bad faith, you don't do it. Because we think that encourages corporations to do well in America, which in the end of the day is all of our job.

The one thing that has been missing here is when
you do make a mistake. We're not talking about bad faith.

We're talking about mistake, bad business dealing, not paying attention to the compensation of the CEO, not having the right mix of businesses, keeping too much corporate booty.

I've never met a CEO who doesn't want a huge war chest.

So, when those decisions go wrong, there needs to be some accountability. The way to do it, in my mind, is somewhat guided by the AIG case, to allow each company to go and change its bylaws. I wouldn't try to decide one size fits all. You've got to hold the shares for three years.

You've got to have 1 percent, 5 percent, ten years. Let the companies -- we have companies out there, good companies, that are $100 million companies, and we have companies that are $100 billion companies. If you're going to try to make a rule that fits, it won't work.

And so let the shareholders decide what that amendment to their bylaw ought to include or not include.

Shareholders are pretty smart. And you've got to give some access to the shareholders for accountability of the directors.

Let me just give you some of my experiences.

Disney. No surprise. We ran a rather well known, extensive Vote No campaign against Michael Eisner and George Mitchell.

Let me tell you, that campaign cost us 10 to 12 million dollars. Most shareholders in America couldn't do that if
you didn't belong to a wealthy family. I don't know, but a pretty educated guess, I believe the company spent between 30 to 40 million dollars to retain those two individuals basically as directors.

We need to have some ability -- a mailing, a mailing at Disney. And Disney has got the most shareholders of any company in America -- it was more than $2 million. I'm not talking lawyers. I'm not talking printing. I'm talking postage, U.S. postage, was in excess of $2 million and going up. So, if you don't help the shareholders get some ability to have accountability of the directors and be able to replace them when they don't do a good job, you're I think missing the boat. So I'd encourage you to do that.

One other observation and then I'll stop. And that is, we run about a billion dollar activist fund. On any given day, we have 12, 15 positions of companies, relatively small companies, $1.5 billion. Two-thirds of those companies engage with us by nothing more than a phone call. You call, say we own 2, 3, 4, 5 percent. We'd like to come see you. We've got a couple of ideas. Two-thirds of those people listen, and for the most part engage constructively and adopt some or all of our proposals. About a third. Put it in writing. We'll get back to you. And they never do. Put it in writing. Don't call. We know. We know this company better.
So there is about -- my experience is, about a third of the companies give you the stiff arm. Don't want to hear from you. They know better. Hard to engage with them. And there you need some mechanism, not an immediate one. I like the idea of the amendment because it's really a two-year cycle. You've got to amend the bylaw first, and then a year later come back to decide on a director, and then it's a short slate because it's not going to be a majority of directors probably, is a good process.

So if you're going there, I want to encourage you to keep going. Thank you for the opportunity.

MR. DUNN: The next thing -- I would like to weigh in and I was going to ask Leo a question and I think he wants to respond anyhow. And Joe brought this up and a lot of folks have brought it up is, you have to have the question of state law. You're going to have issues come up. You know, we have 450 issues a year that we've got to resolve in a very short period of time. And so the real question is, if you're going by state law, does it become a two-year process? Because it's not ripe until it doesn't happen. Or is there some way to go about doing it? So I'd like, if you don't mind, Leo, I'd like you to start with that, everybody weigh in, and I won't ask you to weigh in on your view in short slates, because I've already heard how you feel about that.

MR. STRINE: I love short slates. Being short
myself, I feel like it's a tribute to my class. The very
interesting and I think creative thing that was done between
the Securities and Exchange Commission and the state of
Delaware recently which allows the Commission to ask -- to
actually promulgate a certified question of law to the
Delaware Supreme Court.

I actually think there's a juris potential
implication to that that is useful in this dynamic, which is
as a matter of judicial conservatism, Vice Chancellor Lamb,
who is an excellent judge, you know, declined actually to
rule on the validity of a bylaw until there was a vote. That
was judicial conservatism, which is to say, is it real or
not? And then I'm going to decline to do it.

I actually think when the Delaware constitution has
now been amended to contemplate that sort of advisory ruling
by the Delaware Supreme Court, I don't want to prejudge it,
but it becomes more difficult I think for a judge on the
Delaware Court of Chancery asked by an issuer or a proponent
to render a declaratory judgment to say it's not ripe,
because somebody might chuckle and say, well, see your
constitution. And so this constitutional amendment may have
another sort of implication.

I think what we may be talking about his the
maturity of -- and I mean this more in the sense of contrast
-- adolescents like me with mature people. We often say
mature people should act in a seasonable way, which is don't
decide on the eve of proxy season to do something novel and
expect that we're going to turn over the universe and make a
decision that will last for ten years in an instant.

I think if a stockholder has something serious,
they can propose it early enough in the season that maybe at
the, you know, in the summer, late summer, and say this is
the thing, talk to the company, and then get a declaratory
judgment now in a way where you know. I think in general,
though, the Commission, one way for the Commission is to just
simply say this. If it's clearly decided under state law
that this is not a viable bylaw, we're not going to make you
put it on. But if it's not clearly decided and it's in the
form of a bylaw, we're going to allow states to deal with
this.

Now, will that put some pressure on state decision-
makers? Sure it will. But that's -- with responsibility
ought to come accountability. And I think if you actually
look at the things that animate people, like proposals around
takeover defenses, proposals around compensation, proposals
around the election process, there will tend to be a common
set of issues in which some -- you know, the decision of some
cases will provide guidance that will help resolve a lot more
cases.

And so I'm not convinced that you will have, you'll
need 500 cases, for example, to deal with what's okay in the
takeover area in terms of a bylaw; what's okay in the
election area. You know, five to ten decisions out of state
courts could provide an awful lot of guidance. And so I
think this new interaction with the Commission is a useful
thing.

I will reiterate that there is an area I think
specially creates a federal problem, and it's one that we all
ought to be very sensitive to, is this what do you do to
facilitate meetings in a fair and equitable way when there's
a corporate meltdown and you can't file seasonable financial
statements? I don't want to lose that.

Because I think when you look at what brought about
Sarbanes-Oxley, you know, Enron, WorldCom, HealthSouth, it is
an unintended consequence of a well-intended federal
regulation that stockholders' ability to exercise voice is
compromised at precisely the time in the life of a
corporation when it's probably most needed.

And so I hope we don't lose that flavor in anything
that you do this year. Because that really is an important
intersection of federal and state law. I think we all kind
of agree on that.

MR. WHITE: Before we call on any more of the
panelists, I just wanted to make sure that -- is there
anywhere any of the Commissioners would like to take this
CHAIRMAN COX: I think I like where it's going. I'm learning a lot, so, I don't want to --

MR. DUNN: I'll jump in. Judge, do you want to follow up on the state law point, or do you have anything that you want to add?

MR. GRUNDFEST: No. I think, you know, lots of Leo's points were, you know, right spot on. And, you know, the only observation that I would share is the judge observed there are certain situations where the Commission might have to decide whether matters have been clearly decided or not. As we all know, we can have a good faith debate about whether a matter is clearly decided or not. And as practiced lawyers, we all know how to take established decisional law and write a proposal in the shadow of the decisions that's designed to emphasize the ambiguities or the fissures in the established doctrine.

So, to assume that the Commission can easily determine which matters are clearly established under state law and which are not I think is to assume that the future will not look like the past.

MS. FISCH: Just to follow up on the concern about it being a two-year process, I think that there is some value to proceeding slowly and allowing some room for experimentation. I think the Commission has been struggling
with the issue particularly with respect to bylaws that
relate to the director nomination process for some time. And
I don't see a real disadvantage if we have to go through the
bylaw stage first in order to get there.

A small point related to that, if we're going to
use bylaws to address things like the director nomination
process, you might want to think a little bit more carefully
about the word limits. I was just looking at Apria
Healthcare's director nomination policy, which allows
shareholders to nominate directors, deals with a lot of the
issues that the Commission has been considering for a number
of years, such as the percent of shareholders, re-proposal,
director qualifications, disclosure, all of that. It's two
pages on the web.

You know, it's a very careful, thoughtful policy.
I can imagine a lot of experimentation on a lot of the
different fronts. But if you want that kind of responsible
proposal and debate process, I think there needs to be a
little bit more room to do that as well.

MR. WHITE: Commissioner Campos?

MR. GRUNDFEST: If I -- just one other small point
about this two-year cycle, which I really do think is an
important detail. As a practical matter, it's likely to come
up early in the process with regard to any new change.

So the first time that you have a new change and a
new policy, you might run into a two-year cycle, but as Judge Strine points out in Delaware, it might be a shorter cycle now. But once you've resolved it by going through the process the first time, you should have it resolved with regard to most similar issues.

Of course, the system is going to respond and then try to come up with other issues around the edge. So we should understand that the two-year process is the equivalent of a one-time startup cost that we're going to encounter as each new innovation works its way through the system, but once you've got it through the system, it should be relatively cookie cutter in terms of applying it.

COMMISSIONER CAMPOS: I'm hearing, you know, with a lot of interest, all of the cautions about the items that are unresolved under state law, the potential problems if we send, if that were to be the route we go, send binding proposals for the states to deal with. It's not the same thing in every state. You know, what is the fundamental situation with, you know, given rights to shareholder votes and so forth?

What would you say about keeping the current system we have? In other words, not doing anything in terms of letting essentially the world that exists after the AFSCME AIG's situation continue? Which is essentially a, you know, a shareholder one-on-one situation, corporation and
issuer-by-issuer? You know, is that the better part of
valor, you know, in this particular time?

MR. STRINE: I'll take a shot at that. I mean, I
think it's not intolerable at all, and I think it's more
credible than it used to be. I think the question I guess I
have about it is this, which is whether it's sort of only
addressing part of the issue. I mean, I think if you're
going to continue to have federally mandated proxy voting on
precatory proposals, it's really -- it is unavoidably a duty
I think of the Commission to consider thresholds that might
be -- strike a little bit better cost benefit
analysis -- benefit balance for investors.

COMMISSIONER CAMPOS: On precatory?

MR. STRINE: Yes. Because that will be an aspect
-- because what you're going to have is if the AIG decision,
which, you know, frankly -- I mean, the AFSCME decision, I'm
sorry -- it makes sense to me. I mean, the idea that
you -- it's a little bit perverse. We've all talked about
it. The idea that a bylaw dealing with the election process
that might well have been viable under state law was kept off
the ballot when you could have something that was precatory
mandated to be on the ballot.

You're amplifying stockholder influence, and we've
talked about at earlier stages who you might be amplifying
the voice of. There's that concern about who it is. But
it's the election process. That makes sense. There's going
to be more voice then. That means they're going to have more
influence on whoever sits on the board, and it's going to be
-- it be some more costs attendant to that.

If you're still going to have a federally mandated
process dealing with precatory nonbinding proposals, then I
think the Commission has to then take on the burden of
thinking what are the thresholds that have to be met for
someone to actually generate costs for other investors by
using that? And they probably have to be, you know,
tailored.

I also think there's an interesting question, which
is, if the precatory proposal process in that world is really
mostly this historical idea that there ought to be sort of a
voice about corporate social responsibility once a year, even
if it's nonbinding, should we have a kind of admixture, which
is where investors get to propose things that deal with real
governance measures in the form of binding bylaws and put
them on the proxy, but they choose tactically to phrase them
in precatory terms, if you see what I mean. Which is, I
could have done this as a real binding proposal about the
election process, but I think I'll get more votes if I
actually call it nonbinding.

And so that you have the corporate social
responsibility bucket. You have the stuff that could have
been a bylaw, and then you have the stuff that is a bylaw, and we haven't changed any of the thresholds, and, frankly, from the corporate governance industry's perspective, that's great, because it creates the most motion. It's not clear from the individual investor standpoint that that is the best balance.

So I think if you're going to do the two, Commissioner Campos, if you're going to go forward with the election stuff, I do think you've got to look at the cost side of the other. That would be my only comment.

MR. DUNN: Stan if I could follow up with a question for you. You said that you've done some proposals, and what I wasn't clear on was whether you've just gone to meet with them about the proposals or whether you've gone the formal 14a-8 process. Have you done both, or how does that work? And if I could -- one follow-up is, what about the 14a-8 system if you've used it would you fix?

MR. GOLD: Yeah. My comment was going to, talking to them about their business and their proposals. These were not discussions about putting things on the ballot either binding or precatory. These were really trying to get them to focus on how to make the company better without having to remove directors or change bylaws or anything.

And in two-thirds of the cases, we get a receptive audience. What we have done in the ones that we haven't is
begin to suggest that they leave us with no other alternative
but to run a proxy slate, run our own proxy slate and go to
it.

There is a lot of -- and I heard it today in the
other panels, there's a lot of sort of hum about these
precatory, nonbinding. And I don't want to demean any of the
social causes, because in most cases, on a personal level, I
agree with them. But the real heart of this is director
responsibility.

One of the things that I didn't say in the
beginning, and it hasn't been said here, I actually think
that the -- sort of the white elephant in the room that no
one talks about is executive compensation. And if we had
some kind of a rule that was like the AIG case, whether we
just let things stay as the 2nd Circuit suggested, or some
more formal rule, what you're going to get is directors being
much more cautious about big pay packages.

Because what happens is, if they don't work out,
the company doesn't make money, big embarrassment. Not only
are those directors susceptible to being removed on this
particular board, but they probably -- that argument is going
to follow them when they go on other boards. And there is an
industry of directorships around here. I actually like this
idea better than what's being proposed in the House about
trying to limit in some fashion.
Let the shareholders be able to get and remove directors in some kind of a direct form will give you a better lid and caution on compensation, especially given the transparency the Commission has also already asked. So now you've got the transparency, and now you have a mechanism for redress.

MR. DUNN: If I could ask one last question and then ask you guys to tie it into your closing statements. We have 10 or 15 minutes. That way I don't want to rush you, and give you a chance to answer it. We all know the 14a-8 system we have now and how it interacts, and we know the system pretty well now that we've been talking about it for the last 15, 17 days, whatever it was since May 7th.

How would you -- what would -- how would you compare the two? Advantages, disadvantages for shareholders and companies. Which do you think is better for which? And, you know, is it a different mousetrap or a better mousetrap, and for whom? And then please tie that into whatever you wanted to close with. And we'll go in alphabetical order and start with Jill.

MS. FISCH: Sorry. What are we comparing?

MR. DUNN: I'd like to just -- I want to get a feel for what a system that was -- that all binding went in with whatever thresholds, and --

MS. FISCH: Oh, the thing in --
MR. DUNN: And the various things there. How would that compare with what we have now? Do you find it better or worse or just different?

MS. FISCH: Okay. Well, I think that having a system in which serous binding proposals went in and the Commission didn't try and play some sort of mediating role, I think that would be very valuable.

I think -- my earlier remarks may have been misinterpreted. I don't think it would be a bad idea to have state courts and state law more active in resolving some of the questions that are currently unresolved. I think the reason they've been inactive is because a lot of times the issues aren't ripe because of the SEC staff making that preliminary determination.

So to the extent that we think shareholder voting rights are important, it's useful to have state law confront these questions and define actually what the scope of those voting rights are.

Similarly, I think the issuer-specific innovation and experimentation is valuable, and I think right now, director nominations are the hot topic, and we've got the AFSCME case, but we don't know what the next hot topic is going to be. And I think shareholders and issuers should have the freedom to respond, you know, before it gets to the level of, okay, everybody recognizes that this is kind of the
next wave.

With respect to precatory proposals, I think that the current rules give them too much weight and too much support. I think in large part, they're not supported by state law voting rights. They take a lot of time and money and, you know, yes, they're important social issues, but the question is whether shareholder voting is the right tool for dealing with those social issues, and I'm not sure it is.

There are a lot of problems or potential problems with the electronic bulletin board system, some of the discussion on the last panel about the extent to which the anti-fraud rules would apply, the extent to which those communications would be proxy solicitations, the extent to which, well, if it's anonymous postings, are they reliable? Is this even valuable? If it's not anonymous, are you going to have retaliation? I'm thinking of like Grady and Analytics. And are you going to wind up with those sort of problems? Internet fraud and the extent of manipulation that's possible.

So there's a lot of cautionary notes, and if the idea is just to provide the shareholders with some sort of voice or some sort of forum to replicate their presence at the annual meeting in the way that Leo described, why not just require that the company distribute or post some sort of shareholder remarks of the kind of the nature that a
shareholder would be entitled to make at the annual meeting?
You can have word limits. You can raise these issues, right,
both to the other shareholders and to the company management
directors. But you don't need to tie that communication or
that voice with the requirement of a formal vote and the cost
of a proxy solicitation.
So those are my reactions to the proposal.
MR. DUNN: Thank you. Stan?
MR. GOLD: I want to continue to encourage the
Commission to lower the barriers for shareholders to be able
to hold boards accountable. I think that the current system
of federal regulation made it more difficult. So I do like
going to the state law. I think the state law system is one
which can divide what are shareholder responsibilities or
rights and what are directors and management rights. And so
I would encourage the barriers to come down. I think that's
part of your question.
I find myself in keen agreement with the professor.
It's always hard to say that, but I think that you've heard a
lot of good ideas. The precatory is a way I think if you
allow direct action and responsibility in the
bylaws -- binding is what I'm saying -- you will find that
there are probably going to be less precatory. I think the
precatory became a mechanism to let off steam because they
had no -- the shareholders had no ability to have direct
effect on a binding thing.

And I think you will see the balance go down as you, it's my hope that you will allow more direct and binding.

MR. DUNN: I'm not going to let 3,000 miles make us go out of alphabetical order. We'll go to Joe and then -- your turn, Professor Grundfest.

MR. GRUNDFEST: Thank you so much. Thanks so much.

Look, at root this debate is really about various conceptualizations of shareholder democracy, and I think it's interesting to frame the question that way and to say straightforwardly, look, if you believe in democracy, believe in democracy.

If you think that it's important to hear the views of shareholders on all of these questions, whether they are mandated under state law or whether they're precatory under the federal process, and if you think that the shareholders have something intelligent to say and smart to say, that if you think they're smart enough to vote on these matters, aren't they also smart enough to set the rules by which they will or won't vote on many of these matters?

I think it's very difficult to say that shareholders have a selective form of intelligence that makes them capable only of voting on the matters that the SEC says they should vote on. That I think is intellectually a
difficult line to try to defend.

And with regard to, you know, the question of precatory proposals and the like, I think that at some corporations and with some shareholder bases, it makes perfect sense to open the floodgates and allow virtually anything in. In other situations, I think a reasoned approach would be to dramatically constrain the number of precatory proposals. But again, the organizations and the groups that are best situated to do that are the corporations and the shareholders whose proxies are, after all, implicated here.

And the other thing that I think is really obvious after all of these sessions is, look, let's face it. Every constituency has come before you, and they have pounded their own drum. What they're doing in a variety of ways, sometimes very obvious, other times a little bit more subtle, is they're asking the Commission to write rules in such a way that if you were to put the question to the shareholders and to the corporation, you might get a different results.

So, you know, advocates of corporate access, you know, the shareholder governance constituency, social rights communities, however it is you want to articulate them, will of course come to the agency and say we needed the broadest 14a-8 rights. The agency should never keep anything out. And, of course, anything that's mandated under state law
should go in.

That may well get them a level of access that they
would never get if they actually went to the shareholders and
said, you know, what do you think the rules in this situation
should be? That would be an example of the agency in effect
overriding the majority.

By the same token, when the corporate community
comes to you and says, look, what we need to do is shut down
everything that is precatory under 14a-8 and at the same time
make sure that nothing mandatory comes in under 14a-8, too,
they're simply doing exactly the same thing that the activist
groups are doing. They're asking the Commission to write a
rule that at the end of the day may give them an interest and
an outcome that would be very different from the one that the
shareholders and the corporation acting as a group would
actually resolve.

I don't want to be in the middle of that match. I
don't know that the Commission should want to be in the
middle of that match. I think what the Commission should be
thinking about now is an exit strategy. I think you're in
the middle of a political battle that you never should have
gotten into the middle of to begin with. I think this was a
situation where 50 years ago, for a variety of reasons, it
seemed like a good idea at the time. But look at how it's
evolved. Look at where it's taken people to.
Now it may well be that Commissioner Campos’ observation is at the end of the day a pragmatically sound one; that the costs of change here are so high that we don't want to incur those costs. In other words, better the devil we know than the devil we might get by actually going to something that looks like democracy and actually having each corporation decide on its own rules, or by making any major changes at the Commission level, which inevitably will be viewed as either being pro-investor or pro-management or anti-investor or anti-management.

So at the end of the day, I think as a pragmatic matter, to me it seems like the real choices for the agency are you stay where you are, you muddle along, you tinker around at the edges, or you say, look, let's reconceptualize this entire problem from the ground up, and let's come up with an intelligent exit strategy that really devolves authority to the locals, and the locals here are the corporations and the shareholders.

MR. DUNN: You get the last word, last professor.

MR. LANGEVOORT: Last professor. Actually Leo is a professor.

Well, I disagree with Joe actually, finally. Yes, it strikes me that Congress put the commission square in the middle of shareholder voting and corporate suffrage. And on balance what the commission has done in occasionally weighing
in and providing mechanisms for shareholder voice and enhanced democracy has been good for our system. And I'd hate for the commission to take an exit strategy. I don't think the default group will necessarily -- states and corporations will necessarily get it right. The economics of collective action and information deficiencies still work against real corporate governance and real democracy. And so I think the commission, continuing its role is a good one.

What does it do? I find myself somewhat sympathetic with what Commissioner Campos suggested. I do believe that a relatively narrow definition of election for purposes of what is excluded with respect to bylaws is healthy. I think it's important to give shareholders the right voice and the right support.

I do worry very much about moving to a new system. And frankly this may be inherent in the existing system as well, if it requires a two step, going to state courts to litigate the bylaw question, which is expensive and time consuming and can result in endless rounds of bouts, that that will by itself discourage some otherwise healthy experimentalism in this area.

It does strike me that for the commission to wisely define election for purposes of what's to be excluded may be the most sensible strategy in the end rather than trying to
invent something new.

Okay. Last point and then I'm finished. I share the skepticism which grew on me over the last couple of hours about the electronic forum as either a substitute or some mechanism for letting steam off. At best, I would encourage the commission to think about using Reg SK or proxy statements to have corporations elaborate on what processes they choose to adopt to enhance communication.

But for many reasons to create this chat room that we then lock the door and say non-shareholders, you don't get to enter, which I don't think is a good idea, that has us getting into questions of what is the corporation's responsibility for this federally mandated system. It will produce a nightmare of questions and troubles.

Frankly my belief is we have to look to see where the market has failed before we ask for regulatory interventions. And as we heard this morning from Nell and others, chat rooms and other mechanisms for communication are flourishing without the need for regulatory subsidy.

I'd worry about having the hand of the SEC in on this one. And I'll stop there.

MR. DUNN: Thank you. And Leo, I apologize for denigrating your professorship there, I apologize, but you get the last word.

MR. STRINE: A senior fellow or something, an
adjunct something or other at all kinds of places. But let me be real pragmatic here, which -- I'm a pragmatist, and I think you have to separate out the issues of what is sort of really affecting the business governance of American corporations from the traditionally precatory proposal process dealing with corporate social responsibility to talk about and to deal with the real kind of business stuff first.

I think the idea of the SEC -- and I appreciate Joe's point about clearly decided. And because the way it has been approved in the past, some law firms essentially took decisions and said the decision of the Delaware supreme court, striking down dead hand poison pills meant stockholders couldn't propose a bylaw to restrict the use of takeover defenses.

And at one point the commission accepted that and said it was clearly decided under state law that the bylaw was invalid. That ain't want I'm talking about. I'm talking about if there's been a decision about a bylaw by the highest court of a state and the bylaw is basically on all fours, you keep it off. That's where I think you'd have to go to because there has to be -- if the Delaware supreme courts decided that an identical or basically identical bylaw is invalid you keep it off. It can't be the old system, so I agree with Joe on that.

But if you can get it to where if it's genuinely a
jump ball it can be on the ballot, I think you facilitate
company-specific solutions to business situations, which is a
good thing. And I think the AIG compensation thing is a good
example where frankly the stockholders came up with something
which is different than what is proposed in Congress but
works for them and they seem to be happy.

If you had Warren Buffett as your CEO and head of
your -- I mean as an outside director and head of your comp
committee, you might want Warren to be able to go find a CEO
without an annual stockholder vote, you know. If you had a
different comp committee chair, you might want something
different.

But this allows -- and I think in terms of Don's
point, the only thing I disagree with -- I think a few court
cases that actually had real guiding effect, yes, they might
be costly. It might cost $2 million to litigate that case.
How much does it cost to have decades of tumult and
indecision at all of these different companies about these
questions? You've got to look at that.

And I think we work pretty fast in Delaware and we
can answer these things. I've tried entire cases in a month
with a week trial and a decision.

You know, deciding on the validity of a bylaw after
a couple weeks of briefing, we can do that kind of thing if
we have to. So I think it's -- and I think it's also an
elegant way out for the commission of this shareholder access thing because you're providing access in the right way, because the shareholders get to have a dialogue under state law about what they want the system to be and you're not having to engineer and entire system, you're facilitating their rights.

And in terms of this -- somebody raised the inconsistency of you having thresholds and stuff. There is no inconsistency. If you mandate a certain level of access under the federal proxy rules and you said that they have to have so many shares to have that access, that's the federal gateway. You could deny access if under state law, if under North Dakota to propose a bylaw you had to be x and this person wasn't x. There wouldn't be any inconsistency between the federal thresholds and the state things, so there's ways to deal with that.

You can't avoid dealing with some of the issues under section 13, thinking about who stockholders are, are they really long the company.

Joe mentioned stockholder democracy. I'm a Republican. I believe in the republic. And if you want to have direct democracy, that's a different thing than a republic. And one of the things we have in this country, we're having a debate about immigration. What are the rules of citizenship? And I think this will pervade both things.
Under state law there are rules of citizenship, and
I think the commission out to respect them. When
you're -- and this will be my final point about covert social
responsibility, the other dividing line. It's never been a
big issue. There is a cost factor, and if you're amplifying
the real stuff, what are the citizenship rules in the domain
of the polity that the federal government has established?
And if you're going to have democracy, should transients be
able to exercise those rights and cost other people money?
Should there be longer holding periods? Should there be
materiality? You know, how big is your position with
respect -- can be proportionate to the market cap of the
company in order to cost other people money?

You can't have a democracy or republic without a
concept of citizenship. And I am actually with Don on this.
I think it's going to be very difficult for you all to get
out of this game. I see the bulletin board as a way to do
it. And here -- I'll finish with this. I think the way this
is phrased would be the worst possible cost benefit that you
could have because as I understand it, on a
company-by-company basis stockholder activists could choose
to use the proxy materials that they wish or do the bulletin
board.

Now think if you're an issuer and your general
counsel is having to deal with it. You now have to staff up
to handle the bulletin board, when the stockholder advocates
decide to go that way, or the proxy mechanism when they
decide to go that way. You can't -- and I appreciate the
dilemma you are all in.

I actually think the political constituencies
around the precatory proposal process are not ones that would
have scared Lincoln, not ones that would have scared FDR or
frankly Millard Fillmore. In our society it really
isn't -- there's a bunch of people in this town who are
executive directors, and there's a few industries.

If you actually gulped and swallowed and took it on
you would survive and the republic would survive. But I
realize that's difficult because in terms of the voice of the
constituency you face it's very loud. Ordinary American
investors saving for retirement and college are not sitting
around worried about small investors being able to make
social responsibility proposals. If they're serious about
social responsibility then they're voting for members of
Congress who express their beliefs, they're writing their
congressmen.

And so I do think it's doable. I'm not saying it's
easy. It will take guff, but it's manageable guff.

MR. DUNN: Thank you. I'll wrap up and turn it over
to John. I just wanted to thank the five of you and also on
a broader scale I wanted to thank all 17 of the panelists and
all the commissioners for letting me be here today and learn from everybody. I appreciate that.

MR. WHITE: I'm always cautious when I speak for the commission, but I think I'm going to choose Professor Grundfest over Professor Langevoort this time, and I think that we should have an exit strategy today from this topic. We've had our three panels and so thank you all for being here.

I did want to extend special thanks to three lawyers in corporation finance that are all sitting over behind Chairman Cox that have really put together all three of these roundtables. They've done it. They obviously set a commission record that I hope stands for some time of organizing three roundtables in one month. But Lily Brown, Tamara Brightwell and Ted Yu, thank you very much for putting this all together for us.

And I'll turn it back to you, Chairman Cox.

CHAIRMAN COX: Here, here, for that exceptional effort. We very much appreciated it. And speaking for the commission, which I feel very comfortable doing in this context, thanks very much to Jill, Stan, Joe, Don and Leo for in all but Stan's case doing double duty and in Stan's case for flying across the continent to be here with us right before the holiday weekend.

We have learned a great deal from each of your
contributions. We've also learned a lot from the other panels. Your help in synthesizing what we learned from all those other panels has been especially valuable.

So as we go forward ultimately what will come of this is a proposal and that proposal will then be exposed to further comment and discussion and so on. So in that sense we're just beginning, but thank you very, very much for getting us this far.

And to our moderators once again, John and Marty, thank you very much for an excellent job of leading us through three roundtables.

(Whereupon, at 12:42 p.m., the roundtable was concluded.)