National Conference on
Public Employee Retirement Systems
The Voice for Public Pensions

October 2, 2007

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
rules-comments@sec.gov

RE: Comment on Files No. S7-16-07 and S7-17-07

Dear Ms. Morris:

The National Conference on Public Employee Retirement Systems (NCPERS) is writing to comment on File Number S7-16-07, the Release proposing amendments to the Rules under the Securities and Exchange Act of 1934 regarding shareholder proposals as well as access to the proxy for the nomination of directors, and the related File Number S7-17-07 on shareholder proposals relating to the election of directors.

Shareholder Proposals

NCPERS is the largest trade association for public sector pension funds, representing more than 500 public funds throughout the United States. We are a unique network of public trustees, administrators, public officials and investment professionals who collectively oversee nearly $3 trillion in retirement funds managed on behalf of six million retirees and 14 million active public servants. We believe the precatory shareholder process, even though only advisory, affords shareholders a critical and effective avenue of communication with the companies in which they are invested.

We are writing to express our opposition to File Number S7-16-07's suggestion that companies be allowed to opt out of the shareholder proposal model, that an electronic petition model be substituted for the current shareholder proposal model, and that the vote thresholds for resubmitting shareholder proposals be raised.

Thanks to shareholder proposals: it is now the exception, not the rule, for outside directors to receive lucrative lifetime pensions for themselves and surviving spouses for their part time work; more than 300 companies have adopted a majority vote standard for the election of directors; and hundreds of companies have adopted new policies limiting golden parachute awards to their executives.

Shareholder proposals have accomplished this in two ways. One is in their vote totals. In 2006, for example, 14 shareholder proposals covering such topics as majority vote for election of directors, eliminating supermajority votes, declassifying boards of directors, and requiring shareholder approval of poison pills received over 80 percent of the votes cast. Every year since 2003 more than 100 shareholder proposals a year have received majority votes.

Another is that companies, obviously cognizant of the vote support level shareholder proposals now receive, have become very willing to meet and negotiate with the proponents of shareholders proposals. Studies in recent years indicate that one-quarter to one-third of shareholders proposals now end up being withdrawn prior to coming to a vote. It would be naïve to presume that this welcome willingness by companies to meet and to negotiate with shareholders on major corporate governance issues will continue if shareholders do not have the option of filing shareholder proposals.

Therefore, we submit that it would be a major step backwards in the evolution of shareholder rights if a company is granted the right to "opt out" of the shareholder resolution process by having the Board vote to do so (if allowed under State law) or to obtain approval from shareholders through a proxy vote. This would enable the most unresponsive companies to avoid shareholder accountability and would also result in different rules for different companies that would confuse shareholders.

We also do not believe that companies should be allowed to use an electronic petition model for shareholder proposals. The current model ensures that the company has to formulate a reasoned response to any proposal (which in turn promotes negotiations with the proponent) and that each and every investor receives both sides' arguments. Electronic chat rooms and forums can be a valuable addition and enhancement to the shareholder proposal model, but not a substitute.

Finally, we submit it would be a mistake to raise the thresholds for resubmitting shareholder proposals to 10% after the first year (from the current 3%), 15% after the second year (from the current 6%) and 20% after the third year (from the current 10%). Historically, many new types of shareholder proposals initially received small levels of support that grew significantly over time as shareholders became more familiar with the issue. The leap in support can be dramatic. For example, proposals for a majority vote standard for director elections leaped from 11.8% in 2004 to 43.6% in 2005.

In summary, we believe the current shareholder proposal model is working well for shareholders and companies interested in constructive engagement with its shareholders and should not be jeopardized.

Access To The Proxy

We submit that the proposal in File Number S7-16-07, to let shareholders submit a "proxy access" bylaw under which shareholders who have beneficially owned more than 5% of the company's stock for at least one year may nominate candidates for the board of directors and have those candidates appear in the company-prepared proxy contain, will not be practical or meaningful because it contains burdensome Schedule 13G disclosure requirements and the 5% ownership requirement will be extremely difficult to satisfy.

We do support reforms that would provide shareholders with meaningful access to company-prepared proxy materials relating to the nomination and election of directors. Almost all elections for boards of directors in corporate America are uncontested because the cost of running a full-blown election campaign is prohibitive. We submit that if

elections for boards of directors became more common, boards would be more responsive to shareholders and more vigilant in their oversight of companies.

The proposed Schedule 13G detailed disclosure requirements are unlikely to achieve that. We submit that requiring the disclosure of various relationships with the company, dealings with the company and its competitors, meetings with the company, and information about the individuals who are associated with the plan to put forward a proxy access bylaw, will not only discourage shareholders from submitting such proposals but could have the inadvertent effect of disrupting routine dialogues between the company and its shareholders.

We also submit that the 5% ownership requirement is too high to be effective. Although institutional investors own a sizeable majority of outstanding U.S. equities, most of them prudently maintain diverse portfolios that result in them holding a fraction of any one company. Given that reality and the burdensome disclosure requirements discussed in the preceding paragraph, it is difficult to envision the assemblage of a coalition totaling 5% of the shares outstanding.

Shareholder Proposals Relating
To The Election of Directors

File Number S7-17-07 would reinterpret SEC Rule 14a-8(i)(8) under the 1934 Act to permit exclusion of any shareholder proposal seeking access to a company's proxy materials to nominate or elect a company's directors.

This would be logical if a practical, meaningful access to the proxy rule was being proposed. However, as noted in the preceding section, that does not appear to be the case. For example, shareholder proxy access proposals received substantial support in 2007—a majority vote at Cyro-Cell International, 45% at UnitedHealth Group and 43% at Hewlett-Packard.

We submit that allowing shareholders to continue to submit proposals relating to the election of directors is far sounder and productive policy than the flawed access to the proxy proposal in File Number S7-16-07.

We appreciate the opportunity to submit our comments. Please feel free to contact me if you have any questions.

Sincerely,

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Hank H. Kim, Esq.
Executive Director & Counsel