



Caterpillar Inc.  
100 NE Adams Street  
Peoria, Illinois 61629 – 7310

October 2, 2007

**VIA E-MAIL AND**  
**REGULAR U.S. MAIL**

Ms. Nancy M. Morris  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Re: **Shareholder Proposals Relating to the Election of Directors (File No. S7-17-07);**  
**Shareholder Proposals (File No. S7-16-07)**

Dear Ms. Morris:

I am writing on behalf of Caterpillar Inc. ("Caterpillar") in response to the request for comments submitted by the Securities and Exchange Commission (the "Commission") in its July 27, 2007 releases entitled "Shareholder Proposals" (No. 34-56160) (the "Access Proposal") and "Shareholder Proposals Relating to the Election of Directors" (No. 34-56-161) (the "Director Exclusion Proposal"). For the reasons presented below, we support the Director Exclusion Proposal and oppose the Access Proposal. We have also provided responses to various solicitations of comments regarding non-binding proposals under Rule 14a-8.

For more than 80 years, Caterpillar has been building the world's infrastructure, and, in partnership with Caterpillar dealers, is driving positive and sustainable change on every continent. A *Fortune* 75 company, Caterpillar is the world's leading manufacturer of construction and mining equipment, diesel and natural gas engines and industrial turbines. Moreover, Caterpillar is a technology leader in construction, transportation, mining, forestry, energy, logistics, remanufacturing, financing, electronics and electric power generation.

Over the years, Caterpillar has built a solid reputation as a highly ethical company, and we recognize and take seriously our responsibility in fostering sound corporate governance. We share the Commission's belief that corporate boards and management must hold themselves to high standards on corporate governance.

Consistent with Caterpillar's commitment to high standards of corporate governance, we have spent significant time analyzing and reflecting on the Commission's proposals and request for comments. As such, we address the Proposals and request for comments below.

**A. Director Exclusion Proposal**

We support the interpretation and proposed amendments under the Director Exclusion Proposal that clarify the Commission's well established position that company proxy statements are not an appropriate medium for shareholders to nominate directors. Under Rule 14a-8(i)(8), the Commission and its staff historically have permitted companies to exclude from their proxy materials any shareholder proposal that may result in a contested election, including any proposal that would set up a process for shareholders to conduct an election contest in the future. In

the interpretive materials to the Director Exclusion Proposal, the Commission has adopted this interpretation providing “a proposal may be excluded under Rule 14a-8(i)(8) if it would result in an immediate election contest (e.g. by making or opposing a director nomination for a particular meeting) or would set up a process for shareholders to conduct an election contest in the future by requiring the company to include shareholders’ director nominees in the company’s proxy materials for subsequent meetings.” Accordingly, the Commission staff should grant no-action relief to companies allowing them to exclude access bylaw proposals under Rule 14a-8(i)(8).

Additionally, we believe that it is appropriate for the Commission to amend Rule 14a-8(i)(8) to incorporate its interpretation. Amending Rule 14a-8(i)(8) will provide additional guidance to shareholders, companies and the Commission’s staff, and eliminate the confusion created by the Second Circuit in its *AFSCME v. AIG*<sup>1</sup> decision. A clearer rule will help shareholders and companies have a better understanding of the types of shareholder proposals that are proper for inclusion in company proxy materials. Equally as important, the Commission staff will have additional guidance when responding to no action requests. As a result, such increased clarity regarding the boundaries of the exclusion will, therefore, help reduce unnecessary costs, inefficiencies and future litigation.

## **B. Access Bylaws**

As presented in further detail below, we oppose the proposed amendments to Rule 14a-8(i)(8) that would allow shareholders to include in the company proxy materials their proposals for bylaw amendments regarding the procedures for nominating candidates to the board of directors.

We are concerned that widespread access to company proxy materials will diminish, rather than enhance, overall board effectiveness. For example, access to company proxy materials will create the potential for the election of “special interest directors.” Granting such access will allow shareholders to nominate and vote for directors that have specific shareholder’s interest in mind - not *all* of the shareholders. This in turn will create a potential for directors to use their positions to serve particular agendas.

Permitting shareholders direct access to company proxy materials will also frustrate recent initiatives that have strengthened the role and independence of the nominating/governance committee and the board of directors as a whole. Pursuant to its commitment to high corporate governance standards, Caterpillar’s board of directors, with the exception of the chairman & CEO, consists entirely of independent directors pursuant to the standards adopted by the board in accordance with the New York Stock Exchange rules as outlined in its guidelines. All members of Caterpillar’s Governance Committee consist entirely of independent directors as well. Identifying and selecting individuals to become board members is a core function of a nominating/governance committee, and best practices suggest that this committee should lead the director nominations process. We believe a company’s nominating/governance committee is best positioned to determine the skills and qualities desirable in new directors in order to maximize the board’s effectiveness.

Further, allowing proxy access will diminish the effectiveness of the board of directors in that it will turn every director election into a proxy contest. We believe that the Commission has underestimated the number of election contests that will occur as a result of the Access Proposal. Such election contests will result in divisive, contested elections and the need to expend significant corporate resources in support of board nominated candidates. More importantly, such divisive and contested elections will discourage well-qualified prospective directors from serving on corporate boards.

Additionally, meaningful shareholder participation in director elections is already provided under existing proxy rules. Under current proxy rules, shareholders can propose director candidates for consideration to nominating/governance committees and also undertake their own solicitation of proxies for one or more such candidates. The current proxy rules also ensure that such shareholder solicitations provide investors with the

---

<sup>1</sup> See *American Federation of State, County & Municipal Employees, Employees Pension Plan v. American International Group, Inc.* 462 F.3d 1221 (2d Cir. 2006).

information necessary to vote in an informed manner. While there are expenses with soliciting votes, the shareholders who will benefit from the Access Proposal (i.e., those with significant stock holdings) are the same shareholders who are best positioned to finance solicitations under the current proxy rules. Moreover, the Commission's recent adoption of its "e-proxy" initiative will significantly reduce the cost of independent solicitations.

Access to proxy materials is also unnecessary in light of the sweeping changes in the corporate governance landscape, via reforms by Congress (Sarbanes Oxley Act of 2002) and voluntary actions by companies to enhance their corporate governance practices. For example, Caterpillar has voluntarily revised its Guidelines on Corporate Governance Issues to provide that any director nominee who receives a greater number of votes "withheld" from his or her election than votes "for" such election will tender his or her resignation for consideration by the Governance Committee. The Governance Committee then recommends to the board whether to accept such tendered resignation, and the board will publicly disclose its decision. This policy provides stockholders a meaningful role in the election of directors. This is merely one example of the significant changes that have taken place in the corporate governance arena over the past few years and similar changes are expected to continue. Accordingly, a fundamental shift in the Commission's longstanding position on proxy access is particularly inappropriate and unnecessary at this time. Therefore, the Commission should not adopt the proposals and amendments presented in the Access Proposal.

### C. Non-Binding Shareholder Proposals

#### (i) Eligibility Threshold

The Commission has solicited comments on whether it should amend Rule 14a-8 to revise the existing ownership threshold for submitting shareholder proposals. Under current Commission rules, a shareholder is eligible to submit a Rule 14a-8 proposal if the shareholder has continuously held at least \$2,000 in market value or 1% of the company's shares for at least one year. Accordingly, a shareholder with a very nominal investment in a company has the ability to use the company's resources to put forth his or her agenda. Caterpillar spends significant time and financial resources to address and respond to shareholder proposals, negotiating with proponent shareholders and ultimately deciding whether to adopt such proposals. Accordingly, the nominal threshold levels presented above are not consistent with the amount of time and financial resources committed by Caterpillar and other companies to address shareholder proposals. Therefore, Caterpillar strongly urges the Commission to significantly increase the eligibility thresholds.

#### (ii) Resubmission Thresholds

The Commission has also requested comments on whether it should amend Rule 14a-8 to alter the resubmission thresholds for proposals that deal with substantially the same subject matter as another proposal that previously has been included in the company's proxy materials. In our experience, many shareholder proposals receive a relatively low percentage of votes cast, however, the current Commission rules do not adequately prevent repeat shareholder proposals. As such, Caterpillar is forced to expend significant resources to address issues shareholders clearly do not support. Accordingly, we support the following revisions:

- increase the minimum votes a proposal must receive in order to be resubmitted (*e.g.*, a proposal may be excluded if it receives less than 10% of votes cast the first time it is voted on, less than 25% of votes cast the second time it is voted on and less than 40% of votes cast the third time it is voted on); and
- allow the exclusion of a shareholder proposal for a certain number of years if shareholders repeatedly reject it (*e.g.*, a shareholder proposal that is voted on three times but not approved by a majority of the votes cast should be excludable for five years thereafter).

(iii) *Ordinary Business Exclusion*

The Commission has requested comments on whether changes or clarifications should be made to Rule 14a-8(i)(7), the ordinary business exclusion, and its application with respect to shareholder proposals that involve significant social policy issues. We strongly urge the Commission to eliminate the "significant social policy" exception, as there is no state law support for such a position, and there is no predictable standard as to when an issue has gained sufficient popularity to qualify for the "significant social policy." As such it is difficult for companies, shareholders and the Commission to consistently prepare and apply, respectively, the "significant social policy."

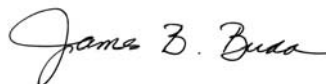
(iv) *"Substantially implemented" Exclusion*

The Commission also should review its staff's application of Rule 14a-8(i)(10), which permits exclusion of a shareholder proposal that has been "substantially implemented." The historical comments and analysis of Rule 14a-8(i)(10) clearly establishes that the intent of such Rule was to permit exclusion of a shareholder proposal where a company has implemented the essential objective of the proposal, even though the manner in which the company implements the proposal does not precisely comply to the actions sought by the shareholder. However, in recent years, the Commission's staff has applied the exclusion in an increasingly narrow fashion.

This has resulted in companies spending unnecessary time and expense on no-action requests and shareholders having to vote on issues that their companies already have addressed. It is our position that once a company board has addressed an issue in a manner that it believes to be in the best interest of the company's shareholders, that issue should not be an appropriate subject for a Rule 14a-8 shareholder proposal. This position is consistent with well-established corporate law principles, which generally provide that the business and affairs of every corporation shall be managed by or under the direction of a board of directors.

Thank you for the opportunity to comment on these important and complex issues. We would be happy to discuss them further at your convenience. If you have any questions regarding this letter, please contact me or Ms. Debra Kuper, Senior Corporate Counsel at (309) 675-1094.

Very truly yours,



Caterpillar Inc.  
Vice President, General Counsel and Secretary

James B. Buda  
Telephone (309) 675-4428  
Facsimile (309) 675-6886

cc: Hon. Christopher Cox, Chairman (via regular U.S. mail)  
Hon. Paul S. Atkins, Commissioner (via regular U.S. mail)  
Hon. Annette L. Nazareth, Commissioner (via regular U.S. mail)  
Hon. Kathleen Casey, Commissioner (via regular U.S. mail)  
Mr. John W. White, Director, Division of Corporation Finance (via regular U.S. mail)