

# THE CLEAN YIELD GROUP

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**To:** Ms. Nancy Morris, Secretary,  
U.S. Securities and Exchange Commission

**From:** Rian F. Fried, President  
Clean Yield Group  
Greensboro, Vermont 05841

**Re:** Comments on Release No. 34-56160; IC-27913; File No. S7-16-07 and Release No. 34-56161; IC-27914; File No. S7-17-07

**Date:** September 7, 2007

The Clean Yield Group is a 23-year-old asset management firm that has, on approximately two dozen occasions in the past 18 years, served as an agent in proposing shareholder resolutions on behalf of its clients. We manage approximately \$120 million on behalf of clients, all of whom are concerned about financial returns, and virtually all of whom are additionally interested in affecting corporate conduct as it impacts such matters as human rights, the environment, treatment of employees, and corporate governance.

We wish to record our opposition to the SEC-proposed amendments to the Rules affecting proxy resolutions under the Securities and Exchange Act of 1934 under File # S7-16-07 and File #S7-17-07 (Releases 34-56160 and 34-56161, respectively). Our opposition is based on concerns about curtailing or eliminating shareholders' present rights to access the proxy for the nomination of directors. Even more pointedly, we are opposed to each of the changes raised by the "concepts" and "general questions" posed by the commissioners for comment regarding the conduct of non-binding shareholder proposals as part of S7-16-07 (Release 34-56160).

Finally, and relatedly, we wish to register our strenuous opposition to the SEC's process in the instance of S7-16-07, in which possible rule changes are floated for public comment without being formally offered as proposed amendments. We trust the comments gleaned from the public in this way will not be deemed as meeting the comment requirements for proposed regulations under the Administrative Procedures Act.

## PROXY ACCESS FOR NOMINATING DIRECTORS

We oppose limiting shareholders' existing right to proxy ballot access for nominations. We believe that having the right to such access is critical for ensuring that boards remain singularly responsive to shareholders and independent of undue management influence. Board compensation is an obvious example of a board interest that may diverge from shareholder interests if shareholders have no meaningful access to the nomination process.

S7-17-07 eliminates shareholder access to the nominating process altogether, and for this reason, we urge the commissioners reject that proposal outright.

S7-16-07 creates a 5% threshold for voting on bylaw changes that could result in proxy access. In major

companies, the threshold would be virtually impossible to attain. Hence, we urge the commissioners to reject this proposal as well.

As noted, S7-16-07 floats ideas for public comment that, if they became SEC rules, would undermine the established shareholder resolution procedures and, ultimately, be detrimental not only to shareholders, but to companies and broader society. We deem the proxy resolution process to be crucial to communicating with company boards, management, and other investors on key issues such as climate change, employee diversity, executive compensation, human rights in overseas factories, and governance reforms.

If Clean Yield's experience in coordinating shareholder resolutions is indicative, the process is often positive for all parties. The majority of Clean Yield's proxy initiatives have been cancelled or withdrawn after constructive dialogues with companies. Nearly all the initiatives that have come to a vote, even when they have not resulted in the requested behavior, have at least given shareholders a sense that they are able to participate in a meaningful process. Shutting off this modest avenue for dialogue would likely increase the chances for miscommunication, frustration, and even alienation, and could result in far less constructive means for shareholders to seek change.

In one example of constructive dialogue, in 2001, a Clean Yield client offered a resolution at Hain Celestial Group, Inc., a food manufacturer based in Melville, NY. The resolution requested a report on the risks and other impacts on the company of genetically modified foods. Though we had had discussions with Hain officials prior to their December 2001 annual meeting, the company balked at producing such a report. The balloting on the resolution yielded over 22% in favor, then a record high vote for a company proposal on that issue. After the vote, Hain's CEO telephoned us and asked for our help in formulating a company-wide policy that would take into account our concerns about GMO risks and other impacts. We helped assemble a team of GMO-food experts who worked with Hain's in-house team over several months. Eventually, the joint effort resulted in a carefully honed policy that was at the time viewed as a model for the industry. Company officials thanked us for our role on several occasions.

Apart from Clean Yield, across U.S. publicly traded companies, annually one quarter to one third of shareholder resolutions are withdrawn because of constructive dialogue with the company resulting in win/win agreements. The rising support votes of resolutions across a range of environmental, social, and governance topics indicate that a broad spectrum of investors increasingly understand, and take seriously, shareholder resolutions as a communication tool.

S7-16-07 poses some specific ideas which we believe would cripple or eliminate this constructive resolution process.

#### A. The Opt-Out Provisions.

We oppose offering companies the right to decline the shareholder resolution process either by seeking a vote of the shareholders to give them that authority, or, if empowered under state law, to have the board vote to decline advisory resolutions. Either path would be ill advised. The most unresponsive companies, those with poor records of investor communications, would be most likely to opt-out and isolate themselves further. Non-binding resolutions act as one important means of holding unresponsive companies accountable.

#### B. Electronic Dialogues.

The release asks "Should the Commission adopt a provision to enable companies to follow an electronic petition model for non-binding shareholder proposals in lieu of 14a-8?" This question builds on the SEC Roundtable discussion of "electronic chat rooms." We would ENCOURAGE chat rooms and other means of electronic communication if they were made available IN ADDITION TO the established written proxy proposal process and if shareholders could be assured their communications were heard by relevant policymakers. We avidly OPPOSE electronic dialogue as a substitute for the existing proxy proposal process which requires a formal public response from directors.

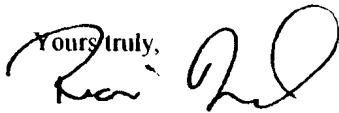
#### C. Thresholds for Resubmitting Proxy Proposals.

Clean Yield opposes changes in the resubmission thresholds. In S7-16-07, the Commission asks for

comments on the resubmission thresholds for shareholder resolutions to the 10%, 15%, and 20% level from the current 3%, 6%, and 10%. Raising the thresholds simply makes it harder for investors to re-introduce proposals for a vote, thus further insulating company management from a reasonable tool of accountability. Over the last 40 years, many issues that now receive significant shareholder support started with proposals that received very modest levels of support.

We recognize that the SEC commissioners must balance the practical resource limitations of management and policy makers with the requests of minority shareowners rights desiring to influence policies. But we believe that the present degree of access to the proxy ballot by shareowners hardly creates onerous conditions for board or management. (In 2007, there have been fewer than 1,400 resolutions, and since a number of companies received multiple resolutions, in actuality, fewer than 1,000 companies will receive resolutions this year.) On the contrary, our experience tells us that current regulations allow for a degree of communication that provides a healthy antidote to insular, ingrown thinking that can dull a company's competitive edge.

Yours truly,

A handwritten signature in black ink, appearing to read "Rian F. Fried". The signature is written in a cursive style with a large, looping initial "R".

Rian F. Fried, President