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CHAIRMAN'S
CORRESPONDENCE UNIT

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Monday, October 1, 2007

The Honorable Christopher Cox, Chairman
The Honorable Annette L. Nazareth, Commissioner
The Honorable Kathleen L. Casey, Commissioner
The Honorable Paul S. Atkins, Commissioner
US Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

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OFFICE OF THE SECRETARY

RE: File Number S7-16-07 and S7-17-07

Dear Mr. Chairman and Commissioners

William Michael Cunningham and Creative Investment Research, Inc. (CIR) appreciate the time and effort the Commission has devoted to the proposed SEC rules issued as File Number S7-16-07 and S7-17-07, but we oppose the proposals for reasons detailed in the attached document.

We understand that:

"Comments sent via paper will be converted to PDF and then posted on our website. We do not edit personal identifying information from submissions; submit only information that you wish to make available publicly."

We do not wish to make the appendix sections (Appendix I and II) public, since they contain confidential and proprietary information. We will electronically submit a comment to the SEC without those attachments.

Thank you,

Sincerely,

William Michael Cunningham
Social Investing Adviser
for William Michael Cunningham and Creative Investment Research, Inc.

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Monday, October 1, 2007

Ms. Nancy Morris
Secretary
UNITED STATES SECURITIES AND EXCHANGE COMMISSION
100 F Street, NW
Washington, D.C. 20549-9303

RE: File Number S7-16-07 and S7-17-07

Dear Ms. Morris:

William Michael Cunningham and Creative Investment Research, Inc. (CIR) appreciate the time and effort the Commission has devoted to the proposed SEC rules issued as File Number S7-16-07 and S7-17-07, but we oppose the proposals for reasons detailed below.

The importance of these rule proposals is clear:

> "..43 resolutions (asking companies how they will cope with climate change) were introduced to the shareholders meetings of American firms this year, according to the Investor Network on Climate Risk, a coalition of green investors."[1]

While we support the Commission's efforts, under the Chairman's leadership, to revise "current proxy rules and related disclosure requirements," if the proposed rules had been in place virtually none of these resolutions could have been offered. Yet, "a motion calling for Exxon Mobil, an American oil giant, to set targets for (greenhouse gas) emissions cuts, won the approval

[1] *"Climate Change. Heavy weather: Firms are coming under increasing pressure to say more about global warming."* The Economist, September 22, 2007. Page 76.

of 31% of shareholders."[2]

Given this, we conclude that the proposed revisions do not "more effectively serve the essential purpose of facilitating the exercise of shareholders' rights under state law." They constrict, rather than expand, shareholders rights.

We note that "the Commission held three roundtables in May 2007. This series of roundtables began with a re-examination of the fundamental principles of federalism that provide the context for our role under Section 14(a) of the Exchange Act." We urge the Commission to get opinions on these matters from a more culturally and economically diverse set of persons.

Background

William Michael Cunningham registered with the U.S. Securities and Exchange Commission as an Investment Advisor on February 2, 1990. He registered with the D.C. Public Service Commission as an Investment Advisor on January 28, 1994. Mr. Cunningham manages an investment advisory and research firm, Creative Investment Research, Inc.

Creative Investment Research, Incorporated, a Delaware corporation, was founded in 1989 to expand the capacity of capital markets to provide capital, credit and financial services in minority and underserved areas and markets. We have done so by creating new financial instruments and by applying existing financial market technology to underserved areas. The Community Development Financial Institution Fund of the US Department of the Treasury certified the firm as a Community Development Entity on August 29, 2003. The Small Business Administration certified the firm as an 8(a) program participant on October 19, 2005. We have not received any revenue due to our participation in the 8(a) program.

Mr. Cunningham's understanding of capital markets is based on firsthand knowledge obtained in a number of positions at a diverse set of major financial institutions. He served as Senior Investment Analyst for an

[2] Ibid.

insurance company. Mr. Cunningham was an Institutional Sales Representative in the Fixed Income and Futures and Options Group for a leading Wall Street firm.

In 1991, Mr. Cunningham created the first systematic bank analysis system using social and financial data, the Fully Adjusted Return® methodology. In 1992, he developed the first CRA securitization, a Fannie Mae MBS security backed by home mortgage loans originated by minority banks and thrifts. .

In 2001, he helped create the first predatory lending remediation/repair MBS security. [3]

Mr. Cunningham also served as Director of Investor Relations for a New York Stock Exchange-traded firm. On November 16, 1995, his firm launched one of the first investment advisor websites. He is a member of the CFA Institute and of the Twin Cities Society of Security Analysts, Inc.

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Pool	Client	Originator	Social Characteristics
FN374870	Faith-based Pension Fund	National Mortgage Broker	Mortgages originated by minority and women-owned financial institutions serving areas of high social need.
FN296479			
FN300249			
GN440280	Utility Company Pension Fund		
FN374869		Minority-owned financial institutions	
FN376162			
FN254066	Faith-based Pension Fund	Local bank	Predatory lending remediation

The firm and Mr. Cunningham have long been concerned with the integrity of the banking and securities markets:

- In September, 1998, Mr. Cunningham opposed the application, approved by the Federal Reserve Board on September 23, 1998, by Travelers Group Inc., New York, New York, to become a bank holding company by acquiring Citicorp, New York, New York, and to retain certain nonbanking subsidiaries and investments of Travelers, including Salomon Smith Barney Inc., New York, New York. Mr. Cunningham based his opposition on the fact that Salomon Smith Barney Inc. had a history of attempting to monopolize markets and defrauding investors. This single fact rendered the merger potentially injurious to the public welfare.

  Specifically, Mr. Cunningham felt the merger was not consistent with 12 U.S.C. Section 1841 et. seq., the Bank Holding Company Act of 1956. The Act states that:

  > "The (Federal Reserve) Board shall not approve -
  > (B) any other proposed acquisition or merger or consolidation under this section whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade.."

  On April 28, 2003, Citigroup Global Markets Inc. and Salomon Smith Barney Inc. (SSB) settled an S.E.C. enforcement action involving conflicts of interest between research and investment banking operations. Citigroup Global Markets Inc. and Salomon Smith Barney Inc. paid fines totaling $400 million. The firms were found, _again_, to be defrauding investors by operating schemes in restraint of trade.

- On Monday, April 11, 2005, Mr. Cunningham spoke on behalf of investors at a fairness hearing regarding the $1.4 billion dollar Global Research Analyst Settlement. The hearing was held in Courtroom 11D of the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York. _No other investment advisor testified at the hearing._ On April 22, 2005, as a direct result of Mr. Cunningham's testimony, the Court extended the publication schedule and ordered that the notice schedule include publications directed at women and minorities. (See: http://www.sec.gov/spotlight/globalsettlement/order042205.pdf)

- Rather than support and engage in the types of predatory subprime lending practices that have negatively impacted the mortgage market and the country as a whole, we proposed to develop alternative, socially responsible methods to enhance homeownership opportunities for minorities and women. As an 8(a) firm, we submitted an unsolicited proposal to Department of Housing and Urban Development (HUD) on April 7, 2006. In our proposal, we offered to research and create a collaborative, market-based approach to increase market participation in a HUD-based socially responsible mortgage lending program. HUD replied that the "Office of Policy Development and Research (to whom we submitted the proposal) is not in a position to support this activity."

Recently, we have observed several cases where corporate management unfairly transferred value from outsider to insider shareholders.[4] These abuses have been linked to the abandonment of ethical principles. Faulty market practices mask a company's true value and misallocate capital by moving investment dollars from deserving companies to unworthy companies.

Signal market participants have abandoned ethical principles in the pursuit

[4] Including, but not limited to, Adlephia Communications, Alliance Capital Management, American Express Financial, American Funds, AXA Advisors, Bank of America's Nations Funds, Bank One, Canadian Imperial Bank of Commerce, Canary Capital, Charles Schwab, Cresap, Inc., Empire Financial Holdings, Enron, Fannie Mae, Federated Investors, FleetBoston, Franklin Templeton, Fred Alger Management, Freddie Mac, Freemont Investment Advisors, Gateway, Inc., Global Crossing, H.D. Vest Investment Securities, Heartland Advisors, Homestore, Inc., ImClone, Interactive Data Corp., Invesco Funds Group Inc., Janus Capital Group Inc., Legg Mason, Limsco Private Ledger, Massachusetts Financial Services Co., Millennium Partners, Mutuals.com, PBHG Funds, Pilgrim Baxter, PIMCO, Prudential Securities, Putnam Investment Management LLC, Raymond James Financial, Samaritan Asset Management, Security Trust Company, N.A., State Street Research, Strong Mutual Funds, Tyco, UBS AG, Veras Investment Partners, Wachovia Corp., and WorldCom. Accounting firms, including Arthur Andersen and Ernst & Young aided and abetted efforts to do so. We believe there are hundreds of other cases.

of material well being. This has occurred in the most materially advantaged county *ever*. By 2007, marketplace ethics reached a new low.

We believe optimal public policies are based on facts. The following are the simple facts:

- On April 28, 2003, every major US investment bank, including Merrill Lynch, Goldman Sachs, Morgan Stanley, Citigroup, Credit Suisse First Boston, Lehman Brothers Holdings, J.P. Morgan Chase, UBS Warburg, and U.S. Bancorp Piper Jaffray, were found to have aided and abetted efforts to defraud investors. The firms were fined a total of $1.4 billion dollars by the SEC, triggering the creation of a Global Research Analyst Settlement Fund.

- In May, 2003, the SEC disclosed that several "brokerage firms paid rivals that agreed to publish positive reports on companies whose shares..they issued to the public. This practice made it appear that a throng of believers were recommending these companies' shares." This was false. "From 1999 through 2001, for example, one firm paid about $2.7 million to approximately 25 other investment banks for these so-called research guarantees, regulators said. Nevertheless, the same firm boasted in its annual report to shareholders that it had come through investigations of analyst conflicts of interest with its 'reputation for integrity' maintained."

- On September 3, 2003, the New York State Attorney General announced he has "obtained evidence of widespread illegal trading schemes, 'late trading' and 'market timing,' that potentially cost mutual fund shareholders billions of dollars annually. This, according to the Attorney General, "is like allowing betting on a horse race after the horses have crossed the finish line."

- On September 4, 2003, a major investment bank, Goldman Sachs, admitted that it had violated anti-fraud laws. Specifically, the firm misused material, nonpublic information that the US Treasury would suspend issuance of the 30-year bond. The firm agreed to "pay over $9.3 million in penalties." On April 28, 2003, the same firm was found to have "issued research reports that were not based on principles of fair dealing and good faith .. contained exaggerated or unwarranted claims.. and/or contained opinions for which there were no reasonable bases." The firm was fined $110 million dollars, for a total of $119.3 million dollars in fines in six months.

- On December 18, 2003, the Securities and Exchange Commission "announced an enforcement action against Alliance Capital Management L.P. (Alliance Capital) for defrauding mutual fund investors. The Commission ordered Alliance Capital to pay $250 million. The Commission also ordered Alliance Capital to undertake certain compliance and fund governance reforms designed to prevent a recurrence of the kind of conduct described in the Commission's Order. Finally, the Commission found that "Alliance Capital breached its fiduciary duty to (it's) funds and misled those who invested in them."

- On October 8, 2004, the Securities and Exchange Commission "announced..enforcement actions against Invesco Funds Group, Inc. (IFG), AIM Advisors, Inc. (AIM Advisors), and AIM Distributors, Inc. (ADI). The Commission issued an order finding that IFG, AIM Advisors, and ADI violated the federal securities laws by facilitating widespread market timing trading in mutual funds with which each entity was affiliated. The settlements require IFG to pay $215 million in disgorgement and $110 million in civil penalties, and require AIM Advisors and ADI to pay, jointly and severally, $20 million in disgorgement and an aggregate $30 million in civil penalties."

- On November 4, 2004, the Securities and Exchange Commission "filed a settled civil action in the United States District Court for the District of Columbia against Wachovia Corporation (Wachovia) for violations of proxy disclosure and other reporting requirements in connection with the 2001 merger between First Union Corporation (First Union) and Old Wachovia Corporation (Old Wachovia). Under the settlement, Wachovia must pay a $37 million penalty and is to be enjoined from future violations of the federal securities laws."

- On November 17, 2004, the Securities and Exchange Commission announced "charges concerning undisclosed market timing against Harold J. Baxter and Gary L. Pilgrim in the Commissions' pending action in federal district court in Philadelphia." Based on these charges, Baxter and Pilgrim agreed to "pay $80 million – $60 million in disgorgement and $20 million in civil penalties."

- On November 30, 2004, the Securities and Exchange Commission announced "the filing..of charges against American International Group, Inc. (AIG) arising out of AIG's offer and sale of an earnings management product." The company "agreed to pay a total of $126 million, consisting of a penalty of $80 million, and disgorgement and prejudgment interest of $46 million."

- On December 22, 2004, "the Securities and Exchange Commission, NASD and the New York Stock Exchange announced..enforcement proceedings against Edward D. Jones & Co., L.P., a registered broker-dealer headquartered in St. Louis, Missouri." According to the announcement, "Edward Jones failed to adequately disclose revenue sharing payments that it received from a select group of mutual fund families that Edward Jones recommended to its customers." The company agreed to "pay $75 million in disgorgement and civil penalties."

- On January 25, 2005, "the Securities and Exchange Commission announced the filing in federal district court of separate settled civil injunctive actions against Morgan Stanley & Co. Incorporated (Morgan Stanley) and Goldman, Sachs & Co. (Goldman Sachs) relating to the firms' allocations of stock to institutional customers in initial public offerings (IPOs) underwritten by the firms during 1999 and 2000."

- According to the Associated Press, on January 31, 2005, "the nation's largest insurance brokerage company, Marsh & McLennan Companies Inc., based in New York, will pay $850 million to policyholders hurt by" corporate practices that included "bid rigging, price fixing and the use of hidden incentive fees." The company will issue a public apology calling its conduct "unlawful" and "shameful," according to New York State Attorney General Elliott Spitzer. In addition, "the company will publicly promise to adopt reforms."

- On Feb. 9, 2005, the Securities and Exchange Commission "announced the settlement of an enforcement action against Columbia Management Advisors, Inc. (Columbia Advisors), Columbia Funds Distributor, Inc. (Columbia Distributor), and three former Columbia executives in connection with undisclosed market timing arrangements in the Columbia funds. In settling the matter, the Columbia entities will pay $140 million, all of which will be distributed to investors harmed by the conduct. The SEC also brought fraud charges against two additional former Columbia senior executives in federal court in Boston."

- On March 23, 2005, the Securities and Exchange Commission "announced that Putnam Investment Management, LLC (Putnam) will pay $40 million. The Commission issued an order that finds Putnam failed to adequately disclose to the Putnam Funds' Board of Trustees and the Putnam Funds' shareholders the conflicts of interest that arose from..arrangements for increased visibility within the broker-dealers' distribution systems."

- On March 23, 2005, the Securities and Exchange Commission (Commission) "announced that it instituted and simultaneously settled an enforcement action against Citigroup Global Markets, Inc. (CGMI) for failing to provide customers with important information relating to their purchases of mutual fund shares."

- On April 19, 2005, the Securities and Exchange Commission "announced that KPMG LLP has agreed to settle the SEC's charges against it in connection with the audits of Xerox Corp. from 1997 through 2000." As part of the settlement, KPMG paid a fine totaling $22.475 million.

- On April 12, 2005, the Securities and Exchange Commission "instituted and simultaneously settled an enforcement action against the New York Stock Exchange, Inc., finding that the NYSE, over the course of nearly four years, failed to police specialists, who engaged in widespread and unlawful proprietary trading on the floor of the NYSE." As part of the settlement, the "NYSE agreed to an undertaking of $20 million to fund regulatory audits of the NYSE's regulatory program every two years through the year 2011." On that same date, the Commission "instituted administrative and cease-and-desist proceedings against 20 former New York Stock Exchange specialists for fraudulent and other improper trading practices."

- On April 19, 2005, the Securities and Exchange Commission announced "that KPMG LLP has agreed to settle the SEC's charges against it in connection with the audits of Xerox Corp. from 1997 through 2000. As part of the settlement, KPMG consented to the entry of a final judgment in the SEC's civil litigation against it pending in the U.S. District Court for the Southern District of New York. The final judgment..orders KPMG to pay disgorgement of $9,800,000 (representing its audit fees for the 1997-2000 Xerox audits), prejudgment interest thereon in the amount of $2,675,000, and a $10,000,000 civil penalty, for a total payment of $22.475 million."

- On April 28, 2005, the Securities and Exchange Commission announced "that it has instituted settled enforcement proceedings against Tyson Foods, Inc. and its former Chairman and CEO Donald "Don" Tyson. The SEC charged that in proxy statements filed with the Commission from 1997 to 2003, Tyson Foods made misleading disclosures of perquisites and personal benefits provided to Don Tyson both prior to and after his retirement as senior chairman in October 2001."

- On May 31, 2005, the Securities and Exchange Commission "announced settled fraud charges against two subsidiaries of Citigroup, Inc. relating to the creation and operation of an affiliated transfer agent that has served the Smith Barney family of mutual funds since 1999. Under the settlement, the respondents are ordered to pay $208 million in disgorgement and penalties and to comply with substantial remedial measures, including an undertaking to put out for competitive bidding certain contracts for transfer agency services for the mutual funds."

- On June 2, 2005, the Securities and Exchange Commission "filed securities fraud charges against Amerindo Investment Advisors, Inc., Alberto William Vilar and Gary Alan Tanaka, Amerindo's co-founders and principals, for misappropriating at least $5 million from an Amerindo client."

- On June 9, 2005, the Commission announced that "Roys Poyiadjis, a former CEO of AremisSoft Corporation, which was a software company with offices in New Jersey, London, Cyprus, and India, agreed to final resolution of fraud charges brought against him by the Securities and Exchange Commission in October 2001. In documents filed with the federal district court in Manhattan, Poyiadjis consented to disgorge approximately $200 million of unlawful profit from his trading in AremisSoft stock -- among the largest recoveries the SEC has obtained from an individual."

- On July 20, 2005, the Securities and Exchange Commission "announced a settled administrative proceeding against Canadian Imperial Bank of Commerce's (CIBC) broker-dealer and financing subsidiaries for their role in facilitating deceptive market timing and late trading of mutual funds by certain customers. The Commission ordered the subsidiaries, CIBC World Markets Corp. (World Markets), a New York based broker-dealer, and Canadian Imperial Holdings Inc. (CIHI), to pay $125 million, consisting of $100 million in disgorgement and $25 million in penalties."

- On August 15, 2005, the Securities and Exchange Commission "charged four brokers and a day trader with cheating investors through a fraudulent scheme that used squawk boxes to eavesdrop on the confidential order flow of major brokerages so they could 'trade ahead' of large orders at better prices."

- On August 22, 2005, the Securities and Exchange Commission "filed civil fraud charges against two former officers of Bristol-Myers Squibb Company for orchestrating a fraudulent earnings management scheme that deceived investors about the true performance, profitability and growth trends of the company and its U.S. medicines business."

- On August 23, 2005, the Securities and Exchange Commission "filed charges against two former top Kmart executives for misleading investors about Kmart's financial condition in the months preceding the company's bankruptcy."

- On November 2, 2005, the Securities and Exchange Commission "filed enforcement actions against seven individuals alleging they aided and abetted a massive financial fraud by signing and returning materially false audit confirmations sent to them by the auditors of the U.S. Foodservice, Inc. subsidiary of Royal Ahold (Koninklijke Ahold N.V.)."

- On November 28, 2005, the Securities and Exchange Commission announced "that three affiliates of one of the country's largest mutual fund managers have agreed to pay $72 million to settle charges they harmed long-term mutual fund shareholders by allowing undisclosed market timing and late trading by favored clients and an employee."

- On December 1, 2005, the Securities and Exchange Commission "announced settled enforcement proceedings against American Express Financial Advisors Inc., now known as Ameriprise Financial Services, Inc. (AEFA), a registered broker-dealer headquartered in Minneapolis, Minn., related to allegations that AEFA failed to adequately disclose millions of dollars in revenue sharing payments that it received from a select group of mutual fund companies. As part of its settlement with the Commission, AEFA will pay $30 million in disgorgement and civil penalties, all of which will be placed in a Fair Fund for distribution to certain of AEFA's customers."

- On December 1, 2005, the Securities and Exchange Commission "announced a settled administrative proceeding against Millennium Partners, L.P., Millennium Management, L.L.C., Millennium International Management, L.L.C., Israel Englander, Terence Feeney, Fred Stone, and Kovan Pillai for their participation in a fraudulent scheme to market time mutual funds. The respondents will pay over $180 million in disgorgement and penalties and undertake various compliance reforms to prevent recurrence of similar conduct."

- On December 19, 2005, the Securities and Exchange Commission "announced that it filed and settled insider trading charges both against an accountant and a former executive of Sirius Satellite Radio, Inc. who illegally profited from advance knowledge of radio personality Howard Stern's $500 million contract with Sirius."

- On December 21, 2005, the Securities and Exchange Commission "sued top executives of National Century Financial Enterprises, Inc. (NCFE), alleging that they participated in a scheme to defraud investors in securities issued by the subsidiaries of the failed Dublin, Ohio company. NCFE, a private corporation, suddenly collapsed along with its subsidiaries in October 2002 when investors discovered that the companies had hidden massive cash and collateral shortfalls from investors and auditors. The collapse caused investor losses exceeding $2.6 billion and approximately 275 health-care providers were forced to file for bankruptcy protection."

- On January 3, 2006, the Securities and Exchange Commission announced "that it filed charges against six former officers of Putnam Fiduciary Trust Company (PFTC), a Boston-based registered transfer agent, for engaging in a scheme beginning in January 2001 by which the defendants defrauded a defined contribution plan client and group of Putnam mutual funds of approximately $4 million."

- On January 4, 2006, the Securities and Exchange Commission "filed securities fraud charges against McAfee, Inc., formerly known as Network Associates, Inc., a Santa Clara, California-based manufacturer and supplier of computer security and antivirus tools. McAfee consented, without admitting or denying the allegations of the complaint, to the entry of a Court order enjoining it from violating the antifraud, books and records, internal controls, and periodic reporting provisions of the federal securities laws. The order also requires that McAfee pay a $50 million civil penalty."

- On January 9, 2006, the Securities and Exchange Commission "announced that Daniel Calugar and his former registered broker-dealer, Security Brokerage, Inc. (SBI), agreed to settle the SEC's charges alleging that they defrauded mutual fund investors through improper late trading and market timing. As part of the settlement, Calugar will disgorge $103 million in ill-gotten gains and pay a civil penalty of $50 million."

- On February 2, 2006, the Securities and Exchange Commission "announced that it filed an enforcement action against five former senior executives of General Re Corporation (Gen Re) and American International Group, Inc. (AIG) for helping AIG mislead investors through the use of fraudulent reinsurance transactions."

- On February 9, 2006, the Commission announced "the filing and settlement of charges that American International Group, Inc. (AIG) committed securities fraud. The settlement is part of a global resolution of federal and state actions under which AIG will pay in excess of $1.6 billion to resolve claims related to improper accounting, bid rigging and practices involving workers' compensation funds."

- On March 16, 2006, the Securities and Exchange Commission "announced a settled enforcement action against Bear, Stearns & Co., Inc. (BS&Co.) and Bear, Stearns Securities Corp. (BSSC) (collectively, Bear Stearns), charging Bear Stearns with securities fraud for facilitating unlawful late trading and deceptive market timing of mutual funds by its customers and customers of its introducing brokers. The Commission issued an Order finding that from 1999 through September 2003, Bear Stearns provided technology, advice and deceptive devices that enabled its market timing customers and introducing brokers to late trade and to evade detection by mutual funds. Pursuant to the Order, Bear Stearns will pay $250 million, consisting of $160 million in disgorgement and a $90 million penalty."

- On April 11, 2006, the Securities and Exchange Commission announced "charges against individuals involved in widespread and brazen international schemes of serial insider trading that yielded at least $6.7 million of illicit gains. The schemes were orchestrated by..a research analyst in the Fixed Income division of Goldman Sachs, and a former employee of Goldman Sachs."

- On August 9, 2006, the Securities and Exchange Commission "filed civil charges against three former senior executives of Comverse Technology, Inc. (Comverse), alleging that they engaged in a decade-long fraudulent scheme to grant undisclosed, in-the-money options to themselves and to others by backdating stock option grants to coincide with historically low closing prices of Comverse common stock."

- On August 10, 2006, the Securities and Exchange Commission "filed an emergency action to halt an ongoing securities fraud targeted at retirement funds. The fraud has raised over $22 million to date."

- On August 17, 2006, the Securities and Exchange Commission today announced the filing of securities fraud charges against Dawn M. Schlegel and Sandra L. Hatfield, two former officers of DHB Industries, Inc., a major supplier of body armor to the United States military and law enforcement agencies.

- On August 21, 2006, the Securities and Exchange Commission "filed an emergency enforcement action to halt an ongoing fraudulent offering of stock in a company called One Wall Street, Inc. in which the defendants have obtained over $1.6 million from at least 64 investors, most of them senior citizens."

- On August 28, 2006, the Securities and Exchange Commission "announced settled enforcement proceedings against Prudential Equity Group, LLC (PEG), formerly known as Prudential Securities Inc. (PSI), alleging that former PSI registered representatives defrauded mutual funds by concealing their identities, and those of their customers, to evade mutual funds' prospectus limitations on market timing. PEG has been ordered to pay a total of $600 million pursuant to a global civil and criminal settlement with the United States Attorney's Office for the District of Massachusetts, the Commission, the Massachusetts Securities Division, NASD, the New Jersey Bureau of Securities, the New York Attorney General's Office and the New York Stock Exchange.

- On September 19, 2006, the Securities and Exchange Commission "filed financial fraud charges against Doral Financial Corporation, alleging that the NYSE-listed Puerto Rican bank holding company overstated income by 100 percent on a pre-tax, cumulative basis between 2000 and 2004. Since Doral Financial's accounting and disclosure problems began to surface in early 2005, the market price of the company's common stock plummeted from almost $50 to under $10, reducing the company's market value by over $4 billion.

- On September 26, 2006, the Securities and Exchange Commission "announced the institution of a settled enforcement action against BISYS Fund Services, Inc. (BISYS), a mutual fund administrator, finding that BISYS aided and abetted over two dozen mutual fund advisers in defrauding fund investors. BISYS entered into undisclosed side agreements with the advisers, which enabled the advisers improperly to use investors' mutual fund assets to pay for marketing expenses rather than paying for those expenses out of their own assets.

- On September 27, 2006, the Securities and Exchange Commission "announced securities fraud charges against James N. Stanard and Martin J. Merritt, the former CEO and former controller, respectively, of RenaissanceRe Holdings Ltd. (RenRe) and also against Michael W. Cash, a former senior executive of RenRe's wholly-owned subsidiary, Renaissance Reinsurance Ltd. The complaint, filed today in federal court in Manhattan, alleges that Stanard, Merritt, and Cash structured and executed a sham transaction that had no economic substance and no purpose other than to smooth and defer over $26 million of RenRe's earnings from 2001 to 2002 and 2003. The Commission also announced a partial settlement of its charges against Merritt, who has consented to the entry of an antifraud injunction and other relief.

- On Friday, October 6, 2006, the Securities and Exchange Commission "filed securities fraud charges against the operator of a massive Ponzi scheme who raised more than $30 million from 200 investors to pay off personal gambling debts and finance his lavish lifestyle. The Commission's complaint was filed in the United States District Court for the Central District of California against Salvatore Favata, the former President of National Consumer Mortgage, LLC (NCM), a residential mortgage business in Orange County, Calif."

- On October 13, 2006, the Securities and Exchange Commission "announced the institution of a settled enforcement action against Statoil, ASA, a Norway-based and New York Stock Exchange listed multinational oil company, for violations of the Foreign Corrupt Practices Act (FCPA), which prohibits bribery of foreign government officials. The Commission's Order finds that Statoil paid bribes to an Iranian government official in return for his influence to assist Statoil in obtaining a contract to develop a significant oil and gas field in Iran and to open doors to additional projects in the Iranian oil and gas industry."

- On October 30, 2006, the Securities and Exchange Commission "filed settled financial fraud charges in federal court in Detroit against Delphi Corporation, a Troy, Mich., auto parts supplier. In its complaint, the Commission charges Delphi with engaging in a pattern of fraudulent conduct between 2000 and 2004. The Commission also charges thirteen individuals for their alleged roles in the fraudulent conduct and/or in related reporting and books-and-records violations by Delphi."

- On November 8, 2006, the Securities and Exchange Commission "announced that three subsidiaries of Hartford Financial Services Group, Inc. will pay $55 million to settle charges that they misrepresented and failed to disclose to fund shareholders and the funds' Boards of Directors their use of fund assets to pay for the marketing and distribution of Hartford mutual funds and annuities."

- On November 14, 2006, the Securities and Exchange Commission "entered an order sanctioning the City of San Diego for committing securities fraud by failing to disclose to the investing public important information about its pension and retiree health care obligations in the sale of its municipal bonds in 2002 and 2003. To settle the action, the city agreed to cease and desist from future securities fraud violations and to retain an independent consultant for three years to foster compliance with its disclosure obligations under the federal securities laws."

- On December 4, 2006, the Securities and Exchange Commission "charged registered broker-dealer Jefferies & Co., Inc., and two executives in connection with approximately $2 million worth of lavish gifts, extravagant travel and entertainment and other illegal gratuities given to win mutual fund trading business."

- On December 4, 2006, the Securities and Exchange Commission "filed an emergency action against China Energy Savings Technology, Inc., several of its former officers, its controlling shareholder, and others, alleging that they orchestrated an elaborate stock manipulation scheme."

- On December 19, 2006, the Securities and Exchange Commission "obtained an emergency asset freeze to halt an Estonia-based "account intrusion" scheme that targeted online brokerage accounts in the U.S. to manipulate the markets."

- On January 18, 2007, the Securities and Exchange Commission "announced that Fred Alger Management, Inc. (Alger Management) and Fred Alger & Company, Incorporated (Alger Inc.) will pay $40 million to settle the Commission's charges that the companies allowed market timing and late trading in the Alger Fund."

- On February 7, 2007, the Securities and Exchange Commission "filed Foreign Corrupt Practices Act books and records and internal controls charges against El Paso Corporation, alleging that the NYSE-listed Texas energy company indirectly paid nearly $5.5 million in illegal surcharges to Iraq in connection with its purchases of crude oil from third parties under the United Nations Oil for Food Program."

- On March 1, 2007, The U.S. Securities and Exchange Commission "charged 14 defendants in a brazen insider trading scheme that netted more than $15 million in illegal insider trading profits on thousands of trades, using information stolen from UBS Securities LLC and Morgan Stanley & Co., Inc. The SEC complaint alleges that eight Wall Street professionals, including a UBS research executive and a Morgan Stanley attorney, two broker-dealers and a day-trading firm participated in the scheme. The defendants also include three hedge funds, which were the biggest beneficiaries of the fraud."

- On March 12, 2007, the Securities and Exchange Commission "filed civil fraud charges in the U.S. District Court for the Southern District of New York against four former senior executives of Nortel Networks Corporation for repeatedly engaging in accounting fraud to bridge gaps between Nortel's true performance, its internal targets and Wall Street expectations. Nortel is a Canadian manufacturer of telecommunications equipment."

- On March 14, 2007, the Securities and Exchange Commission and the NYSE Regulation, Inc. "settled separate enforcement proceedings against a prime broker and clearing affiliate of The Goldman Sachs Group, Inc. for its violations arising from an illegal trading scheme carried out by customers through their accounts at the firm. Both proceedings find that firm customers traded and profited by illegally selling securities short just prior to public offerings of the companies' securities. In connection with the illegal short sales, the SEC and the NYSE found that the affiliate, Goldman Sachs Execution and Clearing L.P. (Goldman), violated the regulations requiring brokers to accurately mark sales long or short and restricting stock loans on long sales. The SEC and the NYSE further found that, if Goldman had instituted and maintained appropriate procedures, it could have discovered through its own records the customers' illegal activity."

- On March 14, 2007, the Securities and Exchange Commission announced "a settled enforcement action against Banc of America Securities LLC (BAS) for failing to safeguard its forthcoming research reports, including analyst upgrades and downgrades, and for issuing fraudulent research. As part of the settlement, BAS agreed to a censure, a cease-and-desist order, and payment of $26 million in disgorgement and penalties."

- On March 15, 2007, the Securities and Exchange Commission announced "that it has instituted settled enforcement proceedings against three former financial officers of Raytheon Company and one of its subsidiaries. The SEC charged that they were each involved in or aware of certain improper accounting practices that operated as a fraud by failing to adequately and accurately disclose the deteriorating financial results and business of Raytheon's commercial aircraft manufacturing subsidiary. The SEC also charged that each officer was involved in or aware of certain false and misleading disclosures in Raytheon's periodic reports."

- On March 16, 2007, the Securities and Exchange Commission announced "that it has settled its enforcement action against F. David Radler, the former Deputy Chairman and COO of Hollinger International, Inc., pending in the U.S. District Court, Northern District of Illinois.

- On March 22, 2007, the Securities and Exchange Commission "issued a settled cease-and-desist order against American Stock Exchange LLC for failing to enforce compliance with securities laws and rules and failing to comply with its record-keeping obligations. In the order, the Commission found that from at least 1999 through June 2004, the Amex failed adequately to surveil for violations of order handling rules by Amex members and failed to keep and furnish surveillance and other records."

- On March 29, 2007, the Securities and Exchange Commission "announced that Nicor, Inc., a major Chicago-area natural gas distributor, and Jeffrey Metz, its former Assistant Vice President and Controller, will pay more than $10 million to settle charges that they engaged in improper transactions, made material misrepresentations, and failed to disclose material information regarding Nicor's gas inventory in order to meet earnings targets and increase the company's revenues under a performance-based rate plan administered by the Illinois Commerce Commission.

- On April 2, 2007, the Securities and Exchange Commission "filed civil fraud charges in federal district court against Tenet Healthcare Corporation and its former chief financial officer and co-president, its former chief operating officer and co-president, its former general counsel and chief compliance officer, and its former chief accounting officer for failing to disclose to investors that Tenet's strong earnings growth from 1999 to 2002 was driven largely by its exploitation of a loophole in the Medicare reimbursement system. Once Tenet finally revealed its scheme to the investing public and admitted that its strategy was not sustainable, the market value of Tenet's stock plunged by over $11 billion.

- On May 2, 2007 - The Securities and Exchange Commission "announced settled enforcement proceedings against A.G. Edwards & Sons, Inc., alleging that A.G. Edwards failed reasonably to supervise some of its registered representatives who used deceptive means to place market timing trades on behalf of their customers."

- On May 3, 2007, the Securities and Exchange Commission "charged Hafiz Naseem, an investment banker with Credit Suisse (USA) LLC, with illegally divulging non-public information to a person believed to be a banker in Pakistan concerning the leveraged buyout of TXU Corp. by an investor group led by Kohlberg Kravis Roberts & Co. and Texas Pacific Group. Naseem misappropriated the information from his employer, Credit Suisse, which served as a financial advisor to TXU in connection with the buyout."

- On May 7, 2007, the Securities and Exchange Commission "announced a settled administrative proceeding against Zurich Capital Markets Inc. (ZCM) for its role in providing financing to hedge fund clients that engaged in market timing of mutual funds and facilitating the hedge funds' deceptive trading tactics."

- On May 9, 2007, The United States Securities and Exchange Commission "announced settled fraud charges against Morgan Stanley & Co. Incorporated (Morgan Stanley) for its failure to provide best execution to certain retail orders for over-the-counter (OTC) securities."

- On May 14, 2007, the Securities and Exchange Commission "filed insider trading charges against a former Oracle Corporation vice president who allegedly traded on confidential information about Oracle acquisition targets."

- On May 16, 2007, the Securities and Exchange Commission "charged a former Wall Street executive and three other individuals with securities fraud for perpetrating a decade-long scheme to defraud savings banks and their depositors in connection with the banks' conversion from mutual to stock ownership."

- On May 23, 2007, the Securities and Exchange Commission announced "the filing and settlement of charges that The BISYS Group, Inc., a leading provider of financial products and support services, violated the financial reporting, books-and-records, and internal control provisions of the Securities Exchange Act of 1934."

- On May 31, 2007, the Securities and Exchange Commission announced "the filing of a civil action against Brocade Communications Systems, Inc., a San Jose, Calif., computer networking company, for falsifying its reported income from 1999 through 2004. Brocade has agreed to pay a penalty of $7 million to settle the charges that it committed fraud through its former CEO and other former executives who repeatedly granted backdated stock options, misstated compensation expenses, and concealed the conduct by falsifying documents."

- On May 31, 2007, the Securities and Exchange Commission "filed civil fraud charges in federal district court for the Northern District of California against California-based software maker Mercury Interactive, LLC (formerly known as Mercury Interactive Corporation) and four former senior officers of Mercury — former Chairman and Chief Executive Officer Amnon Landan, former Chief Financial Officers Sharlene Abrams and Douglas Smith, and former General Counsel Susan Skaer. The SEC alleges that the former senior officers perpetrated a fraudulent and deceptive scheme from 1997 to 2005 to award themselves and other employees undisclosed, secret compensation by backdating stock option grants, failing to record hundreds of millions of dollars of compensation expense, and falsifying documents to further this scheme."

- On June 26, 2007, the Securities and Exchange Commission "announced settled enforcement actions against London-based hedge fund adviser GLG Partners, L.P. for illegal short selling in connection with 14 public offerings."

- On July 19, 2007, the Securities and Exchange Commission "brought settled enforcement actions against four former executives at SmartForce PLC, the company's former outside auditor, and its former audit engagement partner in connection with the software company's overstatement of revenue by $113.6 million and net income by $127 million during a 3½-year period ending in mid-2002."

- On July 24, 2007, the Securities and Exchange Commission "filed insider trading charges against a former MDS Inc. employee who allegedly stole confidential information about MDS's impending tender offer for the shares of Molecular Devices Corp. (Molecular) and, along with his wife, used that information to trade in Molecular securities ahead of the merger's public announcement."

- On July 24, 2007, the Securities and Exchange Commission "filed securities fraud charges against the operators of an Internet-based Ponzi scheme that raised $41.9 million in just four months from more than 20,000 investors worldwide."

- On July 25, 2007, the Securities and Exchange Commission "filed civil charges against ConAgra Foods, Inc., alleging that it engaged in improper, and in certain instances fraudulent, accounting practices during its fiscal years 1999 through 2001, including the misuse of corporate reserves to manipulate reported earnings in fiscal year 1999 and a scheme at its former subsidiary, United Agri-Products (UAP), in 2000 that involved, among other things, improper and premature revenue recognition. ConAgra is a diversified international food company headquartered in Omaha, Neb."

- On July 26, 2007, the Securities and Exchange Commission "announced that Cardinal Health, Inc., a pharmaceutical distribution company based in Dublin, Ohio, has agreed to pay $35 million to settle charges that it engaged in a nearly four-year long fraudulent revenue and earnings management scheme, as well as other improper accounting and disclosure practices."

- On July 31, 2007, the Securities and Exchange Commission "charged Aspen Technology, Inc., with fraudulently inflating revenue over a three-year period. The SEC's order finds that Aspen's former senior management, motivated by a desire to boost revenues and meet securities analyst earnings expectations, was directly involved in negotiating and improperly recognizing revenue on transactions.

- On August 1, 2007, the Securities and Exchange Commission "filed charges against Silicon Valley semiconductor company Integrated Silicon Solution, Inc. (ISSI) and its former Chief Financial Officer, Gary L. Fischer, alleging that they engaged in a long-running fraudulent scheme to backdate stock option grants."

- On August 3, 2007, the Securities and Exchange Commission "charged a London, England resident with insider trading ahead of the July 14, 2006, announcement that San Diego-based Petco Animal Supplies, Inc. would be purchased by two private equity firms."

- On August 9, 2007 - The Securities and Exchange Commission "announced a settled enforcement action against General American Life Insurance Company and a former senior vice president, William C. Thater, for their roles in a late trading scheme. General American is a St. Louis-based insurance company and subsidiary of MetLife, Inc."

- On September 5, 2007, the Securities and Exchange Commission "filed charges stemming from a $428 million securities fraud that victimized thousands of seniors and other investors throughout the United States. The SEC's action, filed in federal district court in Chicago, Ill., charges 26 defendants and alleges that they participated in a massive fraud that involved the sale of securities in the form of 'Universal Leases.' The investments were structured as timeshares in several hotels in Cancun, Mexico, coupled with a pre-arranged rental agreement that promised investors a high, fixed rate of return. The fraudulent Universal Lease scheme eventually collapsed, leaving investors with losses that exceed $300 million."

- On September 12, 2007, the Securities and Exchange Commission "charged four more former officers of Nortel Networks Corporation with engaging in accounting fraud by manipulating reserves to manage Nortel's earnings."

- On September 13, 2007, the Securities and Exchange Commission "charged 69 auditors with issuing audit reports on the financial statements of public companies while they were not registered with the Public Company Accounting Oversight Board."

- On September 19, 2007, the Securities and Exchange Commission "announced settled enforcement actions against registered investment adviser Evergreen Investment Management Company (Evergreen), three of its affiliates, and a former officer, alleging that, contrary to prospectus disclosures, they allowed certain shareholders to market time and engage in excessive exchange activity in the Evergreen mutual fund complex."

- On September 19, 2007, the Securities and Exchange Commission "announced settled enforcement proceedings against HSBC Bank USA, N.A., which will pay a $10 million civil penalty and approximately $500,000 in disgorgement for allowing its name and logo to be used in connection with a

Florida-based offering fraud by Pension Fund of America, L.C. (Pension Fund), that was directed primarily at Central and South American investors."

- On September 20, 2007, the Securities and Exchange Commission "charged 38 defendants in a series of fraudulent schemes involving phony finder fees and illegal kickbacks in the 'stock loan' industry. The defendants include 17 current and former 'stock loan' traders employed at several major Wall Street brokerage firms, including Morgan Stanley, Van der Moolen (VDM), Janney Montgomery, A.G. Edwards, Oppenheimer, and Nomura Securities."

Our position with respect to capital markets regulation recognizes the primacy of protecting investors. Investor interests, broadly speaking, are not served by fraud and malfeasance. As is clear from this stunning list of sanctions, securities laws seem to have failed both to protect investors and to promote efficiency, if efficiency is defined as providing lower transaction costs to the average investor.[5]

Envy, hatred, and greed continue to flourish in certain capital market institutions, propelling ethical standards of behavior downward. "Facilitating the exercise of shareholders' rights" will help to prevent these incidents from occurring in the future. Indeed, without meaningful reform there is a significant and growing risk that our economic system will simply cease functioning.[6]

Fully identifiable entities engaged in illegal activities. They have, for the most part, evaded prosecution of any consequence. We note that the aforementioned Goldman Sachs, fined $159.3 million by the Commission for various efforts to defraud investors, subsequently received $75 million in Federal Government tax credits.[7]

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[5] Each of the sanctions listed above serve to increase transaction costs by making market institutions marginally less trustworthy, causing investors to spend more time considering their investment options and the market institutions they must use.

[6] Proportional hazard models created by the firm and reflecting the probability of system wide market failure first spiked in September, 1998. The models spiked again in January and August, 2001. They have continued, in general, to trend upward, indicating a generally heightened risk of catastrophic failure.

[7] The tax credits were awarded under the U.S. Department of the Treasury New Markets Tax Credit (NMTC) Program. (See: http://www.cdfifund.gov/programs/nmtc/).

We also note that the aforementioned Alliance Capital Management, fined $250 million by the Commission for defrauding mutual fund investors, received a contract[8] in August, 2004 from the U.S Department of the Interior (DOI) Office of Special Trustee for American Indians, to manage $404 million in Federal Government trust funds.[9]

SEC Proxy Access Proposals

We oppose the proposed SEC rules, issued as File Number S7-16-07 and S7-17-07. The need for reform is demonstrated by the number and type of fraudulent practices the SEC itself has stopped.

Investors are at risk.

The Commission notes that proxy access regulations:

> "have been designed to facilitate the corporate proxy process so that it functions, as nearly as possible, as a replacement for an actual, in-person gathering of security holders, thus enabling security holders 'to control the corporation as effectively as they might have by attending a shareholder meeting.'"

It also, in S7-17-07, noted that it is:

> "publishing this interpretive and proposing release to clarify the meaning of the exclusion for shareholder proposals related to the election of directors that is contained in Rule 14a-8(i)(8) under the Securities Exchange Act of 1934. Rule 14a-8 is the Commission rule that provides shareholders with an opportunity to place a proposal in a company's proxy materials for a vote at an annual or special meeting of shareholders."

[8] Contract number NBCTC040039.

[9] The contract was awarded despite the fact that placing Alliance Capital Management in a position of trust is, given the Commission's enforcement action, inconsistent with common sense, with the interests of justice and efficiency and with the interests of Indian beneficiaries. Alliance is also in violation of DOI Contractor Personnel Security & Suitability Requirements.

Our rational for opposing the proposed rules is outlined below.

Actual and imagined risks to/from increased proxy access

Broker Voting

Publically traded companies do not register individuals as owners of their shares. Shares are held by custodian banks on behalf of investors. Thus, brokers and other depositaries control the ability of issuers to hold shareholder meetings, since they control the ability of certain corporations to achieve a quorum. But brokers have a clear and conflicting economic interest: they seek to promote the trading of shares. They are also conflicted because they may provide investment banking and other services to the company. Not only do conflicted market participants (brokers and other depositaries) control the ownership and transfer of shares in public companies, but they are the only entities legally able to facilitate required communication between the owners and the company. Brokers and other depositaries are compensated for their role as impediments to the efficient flow of information between owner and company.

Empty Voting

As we noted in our May 5, 2003 comments to the Commission concerning Solicitation of Public Views Regarding Possible Changes to Proxy Rules (File Number S7-10-03)[10],

> "To minimize the possibility that outsiders will use this process to create new takeover techniques, we suggest the Commission require full disclosure of all nominee interests, including any interests that could conflict with those of shareholders. In addition, should shareholders discover that this process has been used as a takeover device, we suggest the Commission put into place a

[10] Online at: http://www.sec.gov/rules/other/s71003/wmccreative050503.htm

series of strict monetary and criminal penalties. This set of penalties would include forfeiture of corporate control."

We further refined this model in a letter to the SEC dated December 23, 2003 concerning Security Holder Director Nominations (File Number S7-19-03)[11],

> Rules that would grant greater shareholder access to the proxy "do have the potential to be disruptive. Certain groups, including labor and related narrowly focused interests, corporate raiders, mutual funds, hedge funds, investment banks and others may seek to use these new rules unfairly, to create new harassment and takeover techniques.[12] To minimize this possibility, we suggest the Commission require full disclosure of all director nominee interests, including any interests that could conflict with those of other shareholders."

Special Interest Directors

As we noted in our December 23, 2003 comments,

> "The claim that special interests will use the newly proposed rules to pursue an agenda harmful to other shareholders also rings hollow. Special interests are already well represented on every board. For example, one special interest group, males, currently occupy 90% of all Board seats. In any event, Board members are almost always self-interested. Most have an agenda of some sort. Once formed, boards become very political, very quickly. Such is the nature of business.
>
> Suggestions that any election contests that may occur as a result of the proposed rules would be a distraction to management and a waste of company resources are, likewise, spurious. There is no reason to assume contested elections will increase. They may, in fact, decrease. Such events

[11] Online at: http://www.sec.gov/rules/proposed/s71903/wmccir122203.pdf

[12] Given their critical role in the capital formation process, we suggest that, if an investment bank or mutual fund is found to have used enhanced proxy access devices *unfairly or unethically, their SEC registration be lifted* immediately. This is a "death penalty" for the misuse of these new tools. Since hedge funds fall outside SEC jurisdiction, we encourage the creation of similar regulatory sanctions.

occur naturally over the life of a corporation, anyway. Even if an increase is observed, these elections need not drain economic or management resources. We suggest using on-line tools to significantly reduce the cost of board elections."

The fundamental problem is the continuing legal disenfranchisement of shareholders. The SEC Proxy Access proposals, in general and for most shareholders, lessen the ability of security holders "to control the corporation as effectively as they might have by attending a shareholder meeting."

It's "interpretation of and..amendments to Rule 14a-8(i)(8)" is in violation of recent Court rulings, and especially inappropriate given the danger to the interests of investors and the damage to the public interest this interpretation will spur.

Our solution is outlined below.

On October 6, 2006, we provided feedback on SEC File Number 4-515, concerning an SEC-sponsored roundtable discussion relating to the use of the Extensible Business Reporting Language (XBRL.")[13] In those comments, we outlined an internet-based system allowing for shareholder resolutions, Board elections, the dissemination of executive and director compensation data, other corporate governance data, and the issuance of securities. While we oppose the proposed rule changes, we support the SEC's efforts to modernize the proxy process and believe XBRL is a key tool the Agency can use to enhance the flow of valuable proxy and corporate governance information to investors.

Prior to the creation and adoption of high speed, massively networked public computer systems, providing a new method for proxy access was a costly proposition, unfair to public companies and corporate management. This is,

[13] Online at: http://www.sec.gov/news/press/4-515/wcunningham7465.pdf

however, no longer the case. Many investors and shareholders currently use websites like www.google.com/finance/[14] to obtain corporate information.

Internet technology was specifically designed for this type of problem.

For example, public companies should be required to conduct Board elections on-line, via the Internet, on an SEC monitored and maintained website. Candidates could be nominated by shareholders on-line and a fair, efficient candidate screening procedure could be established. We note such action can be constructive, especially in light of the market malfeasance cited above.

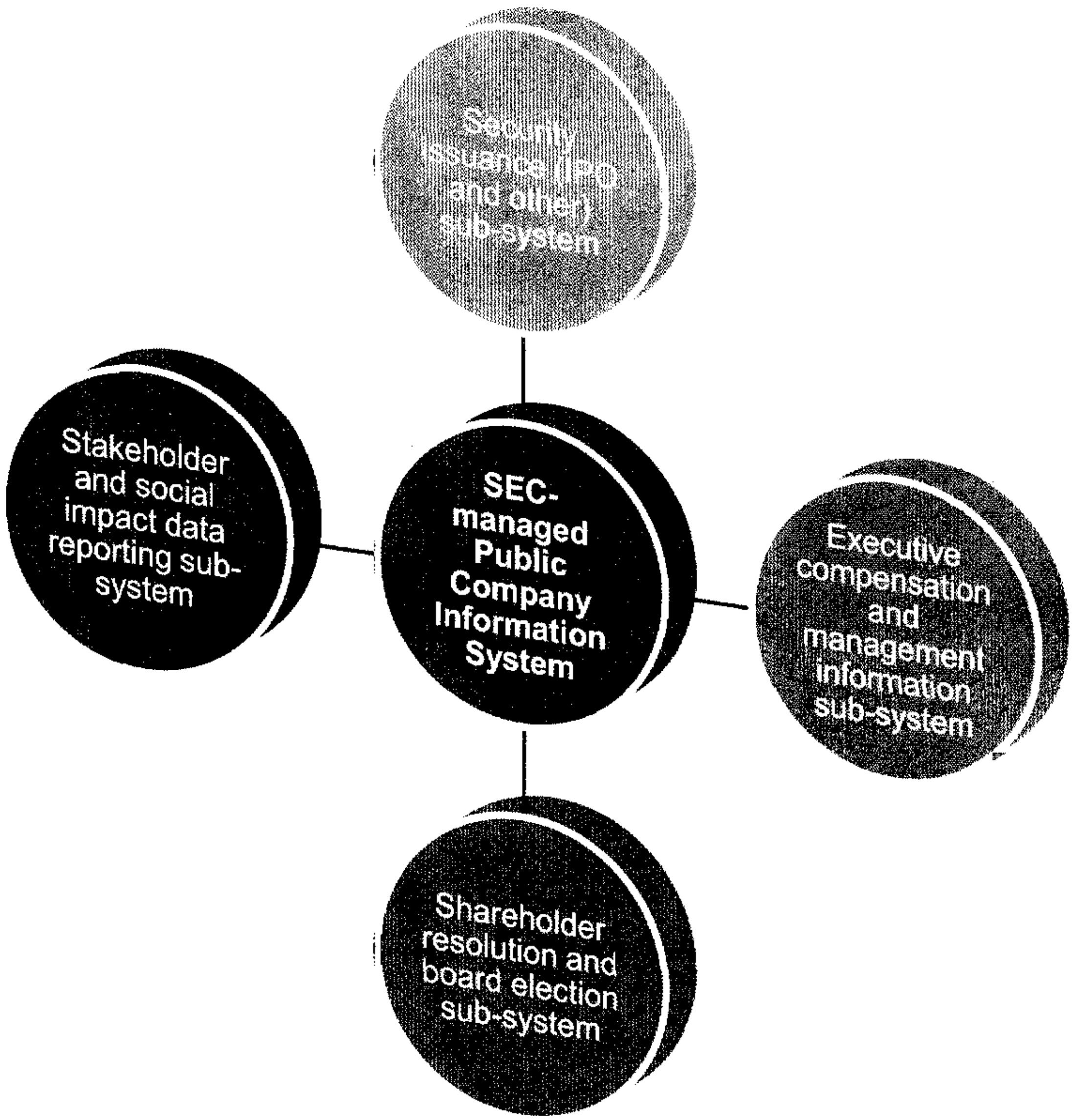
Relevant XBRL-tagged information could be submitted using a secure, SEC-maintained, tamper resistant, management-independent website. Data would be tabulated in real time. The proposed executive and director compensation database could be tied to a Board member nomination and vote tabulation system and a shareholder accounting system. Once collected, executive and director compensation information could be easily incorporated into on-line proxy materials. We believe public companies should be *required* to disclose executive and director compensation via the Internet.

Finally, we suggest using a fairness-enhanced, Dutch-auction style system to allocate and price initial and secondary public offerings (IPO.)[15] The network of prescreened buyers, already well known to Wall Street, could easily be moved to this system. The system would be designed to meet certain security and performance standards.

Graphically, the system would look as follows:

[14] Google Finance "offers a broad range of information about North American stocks, mutual funds and public and private companies along with charts, news and fundamental financial data." This dataset will include compensation information.

[15] We have developed a fairness-enhanced Dutch-auction style system to allocate and price securities, our Fully Adjusted Return™ Auction System. The system is proprietary and a trade secret. As such, it is beyond the scope of this comment.


Security issuance (IPO and other) sub-system
Stakeholder and social impact data reporting sub-system
SEC-managed Public Company Information System
Executive compensation and management information sub-system
Shareholder resolution and board election sub-system

An Internet based, XBRL-enhanced, on-line system, allowing for shareholder resolutions, Board elections, the dissemination of executive and director compensation data, other corporate governance data, and the issuance of securities, will significantly lower the cost of raising capital.[16] We believe this lowered cost will result in more companies coming to market. More companies coming to market will result in, other things equal, higher levels of economic activity, lower unemployment and lower inflation.

We also believe such a system will be fairer. Currently, members of the public pay, unfairly, for the privilege of purchasing IPO shares: they can only purchase shares at an excessively high price in the after issuance market. We believe a non-proprietary, SEC-owned and managed IPO Dutch auction system will eliminate the short term run up observed in the after issuance IPO market.[17]

We suggest these systems be phased in over three years. In the first year, corporations would simply be offered the option of holding Board elections, disseminating executive and director compensation data, other corporate governance data, and securities on-line. After two years, companies would be required to describe why they chose to use or not to use the system. They would have to report certain information to shareholders. Corporate management would be required to report the cost differential between the proposed system and other methods. Over time, say, after three years, all Board elections, executive and director compensation data, other corporate governance data, and corporate security sales would be conducted and issued through the on-line system.

In summary, we believe the use of on-line, XBRL enhanced, internet-based reporting and capital access tools will significantly reduce costs and increase the flow of capital to all sectors in society. This increase in capital access will, in turn, result in significantly increased general economic activity. We estimate, using proprietary economic models, this increased economic

[16] On average, investment banks appropriate seven percent (7%) of the capital raised via traditional Initial Public Offerings. We estimate the cost will, over six years, fall from 7% to 1%.

[17] This run-up was, according to one source, 16 percent (for IPO stocks issued between 1960 and 1987).

activity at $6 trillion dollars over five years. (This assumes an internet based Board election, executive and director compensation and capital access system that is gender and racially neutral, operating without significant falsification and fraud.)

The internet is a powerful tool. We understand both the potential benefits and the potentially disruptive nature of this technology better than most.[18]

Capital market regulators in other regions of the world will, at some point, enhance their ability to access capital using internet-based tools. Thus, competitive advantage with respect to proxy access, executive and director compensation information and capital access is available to any country with significant economic potential and a modest communications infrastructure.

We do not know which countries will be winners over the long term. We do know that, given the corporate fraud and malfeasance cited, if the proposed proxy process amendments are implemented without the full set of internet-based and XBRL enhanced information and capital access tools outlined above it is unlikely that the United States will long maintain and enjoy its current advantage.

We appreciate the time and effort the Commission has devoted to this task. Thank you for your leadership. Please contact me with any questions or comments.

Sincerely,

William Michael Cunningham
Social Investing Adviser
for William Michael Cunningham and Creative Investment Research, Inc.

[18] The firm launched its first website in 1995. We appreciate the nature of the task facing regulators and legislators: very much like performing surgery on a marathon runner - during a race. Corporate fraud and malfeasance threaten the entire system, just as cholesterol clogged arteries threatens the health of the aforementioned runner. To make matters worse, (and to extend this analogy far too long) not only is a medical malpractice lawyer watching, but the nature of the technology is such that it significantly improves the performance of every runner in the race.

Appendix I

Answers to specific questions concerning File Number S7-16-07

As proposed, a bylaw proposal may be submitted by a shareholder (or group of shareholders) that is eligible to and has filed a Schedule 13G that includes specified public disclosures regarding its background and its interactions with the company, that has continuously held more than 5% of the company's securities for at least one year, and that otherwise satisfies the procedural requirements of Rule 14a-8 (e.g., holding the securities through the date of the annual meeting). Are these disclosure-related requirements for who may submit a proposal, including eligibility to file on Schedule 13G, appropriate?

No. We understand that "the basis for the disclosure that (the SEC is) proposing is the familiar Schedule 13G regime," This is inappropriate and inconsistent. A 13G filing gives shareholders warning that a large investor, who may influence company policy and performance, is present in the investor base. 13G filers are a very small subset of the general investing public. This section of the proposed rule is equivalent to a "poll tax," effectively disenfranchising large groups of investors. The fraud noted above mandates that options for exercising shareholder rights be enhanced, not diminished.

We prefer a set of disclosure rules that are flexible, tied to the specific size and nature of the company, and to the type of investor.

If not, what eligibility requirements and what disclosure regime would be appropriate?

We recognize that the right to submit shareholder resolutions impacting corporate operations, governance and ownership has economic value, like an option. This value was first uncovered by faith based investors, who found their ability to impact societal change diminished as the social order moved to a market-based culture. Using this method allowed them to move with the social order. We have developed an options pricing model to determine value associated with this right. In our model, the option value depends principally on time, interest rates, volatility, and the size and distribution of the economic gains or losses at issue.

The strategy has been co-opted by hedge funds, now using the practice for selfish, potentially destructive purposes. The issue resides with these funds, by their nature not long term investors or sensitive to broader social concerns. Thus, to fully address this issue means first addressing the regulatory loopholes that allow hedge funds to operate.

In general, preference should be given to long term shareholders. We suggest a one year holding period for eligibility, along with online disclosure of information on "background and its interactions with the company" on an SEC-maintained website.

For example, should the 5% ownership threshold be higher or lower, such as 1%, 3%, or 10%? Is the 5% level a significant barrier to shareholders making such proposals?

The 5% ownership threshold should be much lower. Preference should be given to long term shareholders. The threshold should tie to length of ownership. For owners holding the stock over 10 years, there should be a nominal requirement based on number of shares held, say, 100 shares, and a pledge to hold onto the stock for another 10 years. For five year holders, there should be a 1,000 share requirement, and a pledge to hold onto the stock for another 5 years. For one year holders, there should be a 10,000 share requirement, and a pledge to hold onto the stock for another year. The ownership threshold should be set for individual holders. We note that companies would still have the right to discard frivolous proposals.

Does the impediment imposed by this threshold depend on the size of the company?

Yes.

Should the ownership percentage depend on the size of the company?

No. It should be based on length of ownership.

For example, should it be 1% for large accelerated filers, 3% for accelerated filers and 5% for all others?

See above.

Should an ownership threshold be applicable at all?

Yes.

If the eligibility requirement should be different from 5%, should we nonetheless require the filing of a Schedule 13G or otherwise require disclosure equivalent to a Schedule 13G?

No. We suggest you require the filing of an on-line ownership and holding disclosure document. The disclosure data required should decrease as length of ownership increases. As we noted above, we suggest the Commission require full disclosure of all nominee interests, including any interests that could conflict with those of shareholders. In addition, should shareholders discover that this process has been used as a takeover device, we suggest the Commission put into place a series of strict monetary and criminal penalties. This set of penalties would include forfeiture of corporate control.

The proposed one-year holding requirement is consistent with the existing holding period in Rule 14a-8(b)(1) to submit a shareholder proposal. Is it appropriate to limit use of the proposed rules to shareholder proponents that have held their securities for any length of time?

We disagree with the proposed rule, but agree that it is "appropriate to limit use of the rules to shareholder proponents that have held their securities for a significant length of time."

If so, is the one-year period that we have proposed appropriate, or should the holding period be longer (e.g., two years or three years) or shorter than proposed (e.g., six months)?

See above.

Why?

See above.

With regard to the one-year holding requirement, is it appropriate to require that each member of a group of shareholders individually satisfy this holding requirement?

Yes.

Shareholders of some companies, e.g., open-end management investment companies, are not eligible to file Schedule 13G because the securities of those companies are not defined as "equity securities" for purposes of Rule 13d-1, which governs the filing of Schedule 13G by beneficial owners of equity securities. Should we permit security holders of such companies to file a Schedule 13G for the purpose of relying upon proposed Rule 14a-8(i)(8) if the holder otherwise would be eligible to file a Schedule 13G but for the exclusion of the company's securities from the definition of "eligible security?"

Yes, subject to the terms and conditions outlined above.

If we were to do this, what, if any, amendments would be required to Schedule 13G?

See our comments about filing a reduced set of information based on length of ownership and size and type of company.

Should we instead use an eligibility requirement, other than eligibility to file Schedule 13G, in Rule 14a-8(i)(8) for shareholders of companies whose securities are not "equity securities?"

Yes.

If a shareholder acquires shares with the intent to propose a bylaw amendment, could that be deemed to constitute an intent to influence control of the company and thus potentially bar them from filing on 13G?

There is no way to prejudge intent. In addition, corporate events change intent. As we noted above,

> Rules that would grant greater shareholder access to the proxy "do have the potential to be disruptive. Certain groups, including labor and related narrowly focused interests, corporate raiders, mutual funds, hedge funds, investment banks and others may seek to use these new rules unfairly, to create new harassment and takeover techniques.[19] To minimize this possibility, we suggest the Commission require full disclosure of all director nominee interests, including any interests that could conflict with those of other shareholders."

If so, should the Commission provide an exemption that would enable such a shareholder to file on Schedule 13G?

We prefer flexible rules that would allow for changes in intent.

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[19] Given their critical role in the capital formation process, we suggest that, if an investment bank or mutual fund is found to have used enhanced proxy access devices unfairly or unethically, their SEC registration be lifted immediately. This is a "death penalty" for the misuse of these new tools. Since hedge funds fall outside SEC jurisdiction, we encourage the creation of similar regulatory sanctions.

Proposals to establish a procedure for shareholder nominees would be subject to the existing limit under Rule 14a-8 of 500 words in total for the proposal and supporting statement. Is this existing word limit sufficient for such a proposal?

Yes, but irrelevant. We suggest that technological advancements have made these types of limits irrelevant.

If not, what increased word limit would be appropriate?

We would like to see all relevant information including video and audio clips, reference documents, and other data stored in electronic format on an SEC-managed and/or monitored website. Rather than establish a word limit, we suggest a data (file size) limit.

In seeking to form a group of shareholders to satisfy the 5% threshold, shareholders may seek to communicate with one another, thereby triggering application of the proxy rules. In order not to impose an undue burden on such shareholders, should such communications be exempt from the proxy rules?

We believe 5% excessive.

If so, what should the parameters of any such exemption be?

See above.

Is there any tension between the requirement in Schedule 13G that the securities not be acquired or held for the purpose of changing or influencing control of the company and the desire of the holder of such shares to propose a bylaw amendment seeking to establish procedures for including shareholder-nominated candidates to the board?

Yes.

Does the answer to this question depend on the number of candidates sought to be included in the proposal?

No.

If there is tension, should we establish a safe harbor of some kind?

Yes. Long term holders (greater than ten years) and public pension funds should be exempt.

The proposed disclosure standards relate to the qualifications of the shareholder proponent, any relationships between the shareholder proponent and the company, and any efforts to influence the decisions of the company's management or board of directors. To assure that the quality of disclosure is sufficient to provide information that is useful to shareholders in making their voting decisions and to limit the potential for boilerplate disclosure, we have proposed that the disclosure standards require specific information concerning these qualifications, relationships, and efforts to influence the company's management or board of directors. Is the proposed level of required disclosure appropriate?

No. The new item 8b is excessive. It will be problematic for a group of investors to collect this information in a timely manner.

Are any of the proposed disclosure requirements unnecessary to shareholders' ability to make an informed voting decision?

No.

If so, which specific requirements are not necessary?

The following:

- "any direct or indirect interest of the shareholder proponent in any contract with the company or any affiliate of the company (including any employment agreement, collective bargaining agreement, or consulting agreement);
- any discussion regarding the proposal between the shareholder proponent and a proxy advisory firm.
- a description, in reasonable detail, of the content of such direct or indirect *(define indirect)* communication."

Should we require substantially similar disclosure from both the proponent and the company as proposed or should the company be allowed to avoid duplicating disclosure relating to the proponent where the company agrees with the disclosure provided?

The new item 8b is excessive.

Is any additional disclosure appropriate?

The new item 8b is excessive.

We solicit comments with respect to any other types of background information regarding a shareholder proponent that should be disclosed in Schedule 13G or Item 24 of Schedule 14A.

The new item 8b is excessive.

What other types of information do shareholders need to have about the shareholder proponent, or the shareholder proponent's course of dealing with the company, when voting on a proposal?

While we agree that "A shareholder proponent may have a variety of relationships with the company. Because these relationships will often be relevant to an informed decision by other shareholders as to whether to vote in favor of a proposed bylaw amendment, disclosure of information concerning the proposal should include information about such relationships," the nature of the information requirement will change with the nature of the proponent (short or long term investor, public, faith-based or not, etc), the nature of the company (receptive to dialog or not) and the nature of the issues facing the company (under competitive or legal pressure or not.) Unfortunately, no hard and fast rule will suffice here.

Would the proposed Schedule 13G disclosure requirements for shareholder proponents be useful to other shareholders in forming their voting decisions?

Yes, but the new item 8b is excessive and impractical.

Are the requirements practical?

No. The new item 8b is excessive and impractical. A group of investors will not be able to collect this information in a timely manner.

Is any aspect of the proposed disclosure overly burdensome for shareholder proponents to comply with?

Yes.

As proposed, shareholder proponents would be required to disclose discussions with a proxy advisory firm prior to submitting a proposal. Is this disclosure requirement appropriate?

No.

Why or why not?

Shareholder proponent discussions with proxy advisory firms should be private discussions of policy and practice. We see no legitimate reason (absent fraud and malfeasance on the part of shareholder proponents and proxy advisory firms, which is covered by anti-fraud statutes) other shareholders need access to this information. In addition, requiring disclosure may violate attorney/client privilege.

We also propose that companies would be responsible for disclosure regarding their relationships and course of dealing with the shareholder proponent in Item 24 of Schedule 14A. Is this proposed additional disclosure useful?

Yes. We suggest the Commission eliminate most of the proponent disclosure requirements and focus on having "companies disclosure their relationships and course of dealing with the shareholder proponent," in as neutral a manner as possible.

Would any aspect of this disclosure requirement be impractical or overly burdensome?

The new item 8b is excessive and impractical. A group of investors will not be able to collect this information in a timely manner. Shareholder proponent discussions with proxy advisory firms should be private discussions of policy and practice.

As proposed, the disclosures concerning the shareholder proponent and company's relationship must be provided for the 12 months prior to forming any plans or proposals, or during the pendency of any proposals, with regard to an amendment to the company bylaws. Is this the appropriate timeframe?

Yes.

If not, should the timeframe be shorter (e.g., 6 or 9 months) or longer (e.g.,18 or 24 months)? Is any federal holding period requirement appropriate?

No.

Is the proposed reliance on the existing Schedule 13G framework appropriate?

No. We understand that "the basis for the disclosure that (the SEC is) proposing is the familiar Schedule 13G regime," This is inappropriate. Filing 13G gives shareholders warning that a large investor, who may influence company policy and performance, is present in the investor base. 13G filers are a microscopic subset of the general investing public. While the form itself may be appropriate, to base the ability to file on the same standard governing 13G is not.

The proposed 5% rule is equivalent to a "poll tax," effectively disenfranchising large groups of investors. The fraud noted above mandates that options for exercising shareholder rights be enhanced, not diminished.

Should we require the type of disclosure found in Schedule 13G, but nevertheless permit a shareholder who holds less than 5% of a company's shares to file a Schedule 13G and to submit bylaw proposals of the type described herein?

The 5% ownership threshold should be much lower. Preference should be given to long term shareholders. The threshold should tie to length of ownership. For owners holding the stock over 10 years, there should be a nominal requirement based on number of shares held, say, 100 shares, and a pledge to hold onto the stock for another 10 years. For five year holders, there should be a 1,000 share requirement, and a pledge to hold onto the stock for another 5 years. For one year holders, there should be a 10,000 share requirement, and a pledge to hold onto the stock for another year. The ownership threshold should be set for individual holders.

Is there another disclosure provision in the federal securities laws with a lesser ownership requirement that would more appropriate upon which to rely?

Not that we know of at this point.

Is it appropriate to require any additional disclosure by shareholders and/or the company, beyond what is currently required, in connection with a proposed amendment to the company's bylaws in accordance with proposed Rule 14a-8(i)(8)?

No.

Rather, should we require disclosure only when a shareholder actually seeks to nominate a director using a nominating procedure established pursuant to a company's bylaws?

Yes.

As proposed, a nominating shareholder would be required to provide to the company, for inclusion in the company's proxy materials, disclosure responsive to Item 8A, Item 8B, and Item 8C of Schedule 13G, as well as Item 4(b), Item 5(b), Item 7, and Item 22(b) of Schedule 14A, as applicable. Is this the appropriate type and amount of disclosure for a nomination under a shareholder nomination procedure?

Yes. We feel this is a good baseline set of information investors can use to make an informed voting decision.

If not, what disclosure requirement would be appropriate?

No additional requirements.

Is the timing requirement for providing this disclosure appropriate?

Yes.

If not, when should such disclosures be provided?

N/A.

Is it appropriate for the disclosure to be provided to the company for inclusion on its website and in its proxy materials, or should the shareholder instead be responsible for filing the information provided that they beneficially own more than 5% of the company's securities entitled to be voted and are eligible to file on Schedule 13G?

It is appropriate for the disclosure to be provided to the company for inclusion on its website and in its proxy materials.

Does the proposal make sufficiently clear that the nominating shareholder would be responsible for the information submitted to the company?

Yes, but given the 5% restriction, this will be impractical.

Should the proposal include language addressing a company's responsibility for including statements made by the shareholder that it knows are not accurate?

Yes. We also suggest you attach criminal penalties, including the forfeiture of Board membership.

Should information provided by a nominating shareholder be deemed incorporated by reference into Securities Act or Exchange Act filings?

Yes.

If so, why?

To give them the full weight of Federal law.

Should companies that receive a nomination for director from a shareholder be required to file their proxy statement in preliminary form, as is proposed?

Yes.

If not, why would it be appropriate for companies to file directly in definitive form?

N/A.

Should solicitations in favor of or against a nominee for director, by either the company or the shareholder, be filed as definitive additional soliciting materials on the date of first use, as is proposed?

Yes.

If not, how should such materials be filed?

N/A.

As proposed, a nominating shareholder would be required to provide the information required by Item 8A, Item 8B and Item 8C of Schedule 13G to the company for inclusion

on the company's website and in its proxy. Would it be appropriate to add a disclosure requirement on Form 8-K that would apply where a company does not maintain a website?

Yes.

Would it be appropriate to allow a company to choose between website disclosure and Form 8-K disclosure even where a company maintains a website?

No.

Why or why not?

Companies may choose to "hide" the information, if given a choice. A single standard should be established.

Is there disclosure other than that proposed concerning shareholder nominees that would be material to investors?

Yes.

If so, what are those disclosures and why would they be material?

Require disclosure regarding the relationship between the nominating shareholder and shareholder nominee.

For example, should we require disclosure regarding the relationship between the nominating shareholder and shareholder nominee?

Yes.

If so, what disclosures would be appropriate and useful to shareholders?

Monetary relationships and any disclosures that might impact the ability of the nominees to act independently on behalf of all shareholders.

Our proposals are intended to provide a company or its shareholders with the flexibility under the federal securities laws to establish an electronic shareholder forum that permits interaction among shareholders and between shareholders and the company's management

or board of directors, and permits the operator of the electronic shareholder forum to provide for non-binding referenda votes of forum participants. Do our proposals provide this flexibility?

Yes.

Are there additional steps that are necessary to assure that the federal securities laws do not hinder the development of these electronic shareholder forums?

No.

We propose to amend Regulation 14A to encourage the development of electronic shareholder forums that could be used by companies to better communicate with shareholders and by shareholders to better communicate both with their companies and among themselves. In addition, the electronic shareholder forum concept could offer shareholders a means of advancing referenda that might otherwise be proposed as non-binding shareholder proposals under Rule 14a-8. Is this appropriate and, if so, how can we further encourage the development of electronic shareholder forums?

See our Monday, February 06, 2006 comments concerning File No. S7-10-05.[20] The forums should reside on an SEC monitored and maintained server. Relevant XBRL-tagged information could be submitted using a secure, SEC-maintained, tamper resistant, management-independent website. Data would be tabulated in real time. The shareholder database could be tied to a Board member nomination and vote tabulation system and a shareholder accounting system. Once collected, information could be easily incorporated into on-line proxy materials.

As proposed, the new rules would allow companies and shareholders to develop electronic shareholder forums as they see fit, as long as the forums are conducted in compliance with Section 14(a) of the Exchange Act, other federal laws, applicable state law, and the company's charter and bylaw provisions. Should we be more prescriptive in our approach, such as by providing direction or guidance relating to whether a forum is available for non-binding referenda, whether access is limited to shareholders, the frequency with which shareholder records are updated for purposes of enabling participation, or whether the forum assures the anonymity of shareholders who access it?

[20] Online at: http://www.sec.gov/rules/proposed/s71005/wcunningham5867.pdf

Yes. The SEC should be more prescriptive in "providing direction or guidance relating to whether a forum is available for non-binding referenda." Access should be limited to shareholders. Shareholder records should be updated for purposes of enabling participation on at least a weekly basis. There should be no anonymity.

As proposed, we make clear that a company or shareholder that establishes, maintains, or operates a forum is not liable for any statements or information provided by another person. Does the proposed rule adequately address the liability concerns that might face sponsors of and participants in an electronic shareholder forum?

No. While we agree the company should not be liable for any statements or information provided by another person, as long as that person is not employed by or affiliated with the company and using the forum for fraudulent purposes.

In order to encourage use of electronic shareholder forums, we are proposing an exemption for solicitations on an electronic shareholder forum. As proposed, solicitations that do not seek to act as a proxy for a shareholder or request a form of proxy from them and occur more than 60 days prior to an annual or special meeting (or within two days of the announcement of the meeting) are exempt under the proxy rules. Is it appropriate to provide this exemption from regulation for communications on an electronic shareholder forum?

Yes.

Should the exemption apply more broadly to all communications?

Yes.

Would it be possible to conduct an effective proxy solicitation on the forum despite the limitations?

Yes, but we cannot know with certainty at this point. This depends upon the popularity and reach of the technology, the nature of the company, the issues at hand, the size of the economic interests at stake, and the location and ownership of the server (SEC server or private company server.)

Is the 60-day limitation sufficiently long to protect shareholders from unregulated solicitations?

Yes.

Should the time period be shortened (e.g., 30 or 35 days) or lengthened (e.g., 75 or 90 days)?

No.

Is there a better alternative that would encourage free and open communication on electronic shareholder forums, but limit the use of the forums as a way to solicit proxies without providing the full and fair disclosure required in our proxy rules?

Yes. Such advice is, however, beyond the scope of this comment letter. Please contact us for more detail or see our Monday, February 06, 2006 comments concerning File No. S7-10-05.

As proposed, we have provided no guidance on what should happen to the communications and data on the forum within the 60-day period prior to the annual or special meeting. Solicitations that remain posted on the forum that were exempt under proposed Rule 14a-2(b)(6) may no longer be exempt. Should we require that the electronic shareholder forums be taken down within 60 days of a scheduled meeting?

No.

Alternatively, if the forum continues to run, should shareholders who continue making communications on the forum file any communications that are solicitations in compliance with Regulation 14A?

No. The SEC should monitor all communications, another reason for the forum to reside on an SEC server.

Should those shareholders be required to file any solicitations on the forum that occurred more than 60 days prior to the meeting?

Yes.

How would the forums be policed to ensure that the responsible parties are properly filing?

The SEC should monitor all communications, another reason for the forum to reside on an SEC server.

What would be the appropriate use of an electronic shareholder forum with regard to a bylaw proposal, as contemplated in this release?

The forum should provide a cost effective and timely tool that corporate management can use to put matters of importance before shareholders.

For example, should shareholders be able to use a forum to solicit other shareholders to form a 5% group in order to submit a bylaw proposal?

Yes, but we disagree with the 5% standard.

Would it be appropriate to require the shareholder (or group of shareholders) that submits the proposal to file a Schedule 13G that includes specified public disclosures regarding its background and its interactions with the company, that corresponds to the proposed disclosure requirements for shareholder proponents of bylaw amendments concerning shareholder director nominations?

Yes.

Should a shareholder (or group of shareholders) proposing such a bylaw amendment be required to have continuously held a certain percentage of the company's securities entitled to be voted on the proposal at the meeting?

Yes.

What would the appropriate percentage be?

The 5% ownership threshold should be much lower. Preference should be given to long term shareholders. The threshold should tie to length of ownership. For owners holding the stock over 10 years, there should be a nominal requirement based on number of shares held, say, 100 shares, and a pledge to hold onto the stock for another 10 years. For five year holders, there should be a 1,000 share requirement, and a pledge to hold onto the stock for another 5 years. For one year holders, there should be a 10,000 share requirement, and a pledge to hold onto the stock for another year. The ownership threshold should be set for individual holders.

Should a holding period be required?

Yes.

If so, how long should the holding period be?

Minimum one year.

Should a proposal be required to otherwise satisfy the requirements of Rule 14a-8 (e.g., the proposal would have to satisfy the procedural requirements of Rule 14a-8 and not fall within one of the other substantive bases for exclusion included in Rule 14a-8)?

No.

Under current Rule 14a-8, all shareholder proposals and supporting statements are limited to 500 words in total. Should the word limit be different for shareholder submissions of proposed bylaw amendments to establish procedures for non-binding proposals?

We would like to see all relevant information including video and audio clips, reference documents, and other data stored in electronic format on an SEC-managed and/or monitored website. Rather than establish a word limit, we suggest a data (file size) limit.

If so, should the word limit be increased to 3,000 words in order to permit a more thorough description of the proposed procedural framework and in accordance with the approximate word count in current Rule 14a-8? If not 3,000, should the word limit be higher or lower than 3,000 (e.g., 1,000, 2,000, 4,000)?

We would like to see all relevant information, including video and audio clips, reference documents, and other data, stored in electronic format on an SEC-managed and/or monitored website. Rather than establish a word limit, we suggest a data (file size) limit.

Should the proxy statement for the shareholder vote be required to explain that approval of the bylaw would establish procedures that would govern in all circumstances with regard to shareholder requests for the inclusion of non-binding proposals?

Yes.

Should the bylaw itself be required to provide this explanation?

Yes.

Would it be appropriate for the Commission to provide that the substance of the procedure for non-binding proposals contained in a bylaw amendment would not be defined or limited by Rule 14a-8, but rather by the applicable provisions of state law and the company's charter and bylaws? For example, the Commission could provide that the framework could be more permissive or more restrictive than the requirements of existing Rule 14a-8 (e.g., the framework could specify different eligibility requirements than provided in current Rule 14a-8, different subject-matter criteria, different time periods for submitting non-binding proposals to the company, or different resubmission thresholds; or it could specify that non-binding proposals would not be eligible for inclusion in the company's proxy materials, or alternatively that all non-binding proposals would be included in the company's proxy materials without restriction, if these approaches were consistent with state law and the company's charter and bylaws).

Yes.

To ensure that any new rule is consistent with the principle that the federal proxy rules should facilitate shareholders' exercise of state law rights, and not alter those rights, should any rule adopted include a specific requirement that, to be included in a company's proxy materials, a shareholder proposal establishing bylaw procedures for non-binding proposals would have to be binding on the company under state law if approved by shareholders?

Yes.

Would it be appropriate for the Commission to provide that, if shareholders approve a bylaw procedure for non-binding proposals, interpretation and enforcement of that procedure would be the province of the appropriate state court?

Yes.

Under such an approach, the Commission and its staff would not resolve such questions. *Should the Commission or its staff instead become involved in interpreting or enforcing the* company's bylaws?

Yes.

Is there any reasonably foreseeable situation where intervention by the Commission or its staff would be critical to the proper functioning of bylaw procedures for non-binding proposals?

Yes, in cases of fraud or malfeasance or in certain controversial corporate control contests.

In addition, we solicit comments with respect to the practicality and feasibility of relying on state courts as the arbiter of disagreements between companies and shareholder *proponents* over the company's bylaws as they apply to non-binding shareholder resolutions. Should the Commission encourage the proponent of any bylaw procedure governing non-binding proposals to include in the procedure a fair and efficient mechanism for resolving any disagreements between the company and the shareholder as to the bases for inclusion or exclusion of a proposal?

We believe the reference to "states rights" is code for an attitude that supports the resistance of certain insider, entrenched corporate interests to the rights of outside shareholders who are not part of management. Federal law should dominate, given that state law was unable to stop the fraud and malfeasance noted above.

Should the Commission specify that, even after the shareholders approve a bylaw procedure for non-binding shareholder proposals, a shareholder meeting the proposed eligibility requirements could later submit another bylaw procedure that removes or amends the previously-adopted non-binding procedure and that bylaw would not generally be excludable by a company under Rule 14a-8(i)(2) or Rule 14a-8(i)(3)?

Yes.

How might shareholders' overall ability to communicate with management and other shareholders be improved or diminished if shareholders were able to choose different procedures for non-binding proposals than those currently in Rule 14a-8?

We do not know.

Are there additional or different procedures that the Commission should require, encourage or seek to prevent?

Yes.

With respect to subjects and procedures for shareholder votes that are specified by the corporation's governing documents, most state corporation laws provide that a corporation's charter or bylaws can specify the types of binding or non-binding proposals that are permitted to be brought before the shareholders for a vote at an annual or special meeting. Further, most state corporation laws permit a company's board of directors to adopt, amend, or repeal bylaws without a shareholder vote. Because a company's board of directors could adopt a bylaw establishing procedures for the consideration of non-binding proposals at meetings of shareholders, we have not included in the above request for comment any discussion of a board of directors adopting bylaws that would limit the ability of shareholders to raise non-binding proposals for a vote at meetings of shareholders. To the extent a company had in place a bylaw under which non-binding shareholder proposals were not permitted to be raised at meetings of shareholders, a company may be able to look to Rule 14a-8(i)(1) with regard to the exclusion of such proposals. Such ability to exclude the proposals would, of course, be reliant on the bylaw's compliance with applicable state law and the company's governing documents. In light of the board's power to adopt such a bylaw under state law, please consider the following specific requests for comment:

Should the board of directors be able to adopt a bylaw setting up a separate procedure for non-binding shareholder proposals and be able, under our proxy rules, to follow that procedure in lieu of Rule 14a-8 with regard to non-binding proposals?

No. The temptation for the board of directors to ignore troublesome issues, like fraud, is too great.

Should such procedures be deemed to comply with Rule 14a-8 if the bylaw is not approved by a shareholder vote, provided that state law authorizes the adoption of such a bylaw without a shareholder vote?

No.

Should a bylaw proposed and adopted by a company prior to becoming subject to Exchange Act Section 14(a) be deemed to comply with Rule 14a-8 once the company became subject to Exchange Act Section 14(a)?

No.

If so, should such companies be required to provide disclosure regarding the rights of shareholders with respect to the submission of non-binding shareholder proposals for inclusion in the company's proxy materials as part of the description of its equity securities in its Securities Act and Exchange Act registration statements?

Yes.

If not, should companies instead be required to submit the bylaw to a shareholder vote once the company becomes public and subject to Section 14(a) of the Exchange Act, either at a special meeting or an annual meeting?

Yes, at either a special meeting or an annual meeting.

Is there a concern that affiliates of a company could obtain a sufficient number of votes to adopt a bylaw without obtaining a vote of the non-affiliates?

Yes.

Should the federal proxy rules further restrict the operation of bylaw provisions that are otherwise permissible under state law by requiring, for example, that once a company is subject to Section 14(a), the shareholders who are not affiliates of the company ratify the bylaw, or that the bylaw procedure be periodically re-approved by shareholders after its initial approval?

Yes.

Does the fact that the company's bylaws can generally be revised or repealed at any time after adoption mitigate the need for such extraordinary procedures?

No. Technological advancements giving rise to the modifications contemplated in this proposal suggests that changes to corporate bylaws can be made very quickly. This suggests the need for extraordinary review and monitoring procedures.

Should the Commission adopt a provision to enable companies to follow an electronic petition model for non-binding shareholder proposals in lieu of Rule 14a-8? Such a model could include some or all of the following parameters:

- **Electronic petitions would be submitted by shareholders and posted by the company on the electronic proxy notice and access website;**
- **Only shareholders as of the record date could sign the electronic petition through the close of the applicable shareholder meeting;**
- **Execution of the electronic petition would occur through the same control numbers used to vote under electronic proxy;**
- **Communications would be subject to Rule 14a-9, but otherwise would be minimally restricted by the proxy rules;**
- **Results of petitions would be reported as a percentage of total outstanding shares;**
- **The decision to sign or not to sign an electronic petition would not be considered a shareholder vote;**
- **Petitions would follow current Rule 14a-8 guidelines (e.g., would be limited to 500 words) and require the identification of the shareholder-sponsor;**
- **Companies would be permitted to post a response to each petition; and**
- **Petition sponsors could use an "electronic-only" solicitation approach with no obligation to send paper copies.**

Yes.

Are there additional changes to Rule 14a-8 that would improve operation of the rule?

Yes.

If so, what changes would be appropriate and why?

See our comments above.

For example, should the Commission amend the rule to change the existing ownership threshold to submit other kinds of shareholder proposals?

See our comments above.

If so, what should the threshold be?

See our comments above.

Would a higher ownership threshold, such as $4,000 or $10,000, be appropriate?

See our comments above.

Should the Commission amend the rule 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?

No.

If so, what should the resubmission thresholds be – 10%, 15%, 20%? Are there any areas of Rule 14a-8 in which changes or clarifications should be made (e.g., Rule 14a-8(i)(7) and its application with respect to proposals that may involve significant social policy issues)?

N/A.

If so, what changes or clarifications are necessary?

N/A.

Currently, Item 4 in Part I of Form 10-K and Form 10-KSB and Item 4 in Part II of Form 10-Q and 10-QSB require a company to disclose information regarding the submission of matters to a vote of security holders. The required disclosure includes a description of each matter voted upon at the meeting and the number of votes cast for, against, or withheld, as well as the number of abstentions and broker non-votes as to each such matter. In the interest of increased transparency, should additional disclosure be provided with regard to the voting results for non-binding shareholder proposals?

Yes. This would be very helpful information.

For example, should the company be required to disclose votes for non-binding shareholder proposals as a percentage of the total outstanding securities entitled to vote on the proposal?

Yes.

Or as a percentage of the total votes cast?

Yes.

Would shareholders benefit from receiving this type of information?

Yes.

Would adoption of the proposed rules conflict with any state law, federal law, or rule of a national securities exchange or national securities association?

Not that we are aware of.

To the extent you indicate that the proposed rules would conflict with any of these provisions, please be specific in your discussion of those provisions that you believe would be violated.

N/A.

As the Commission staff noted in its July 15, 2003 Staff Report entitled "Review of the Proxy Process Regarding the Nomination and Election of Directors," the cost to shareholders of soliciting proxies in opposition to the company's solicitation has been considered to be prohibitive and, as such, has been a key component of arguments in favor of increasing the opportunity for the inclusion of shareholder nominees for director in the company's proxy materials. Significant recent technological advances appear to have the potential to substantially reduce the costs of such a proxy solicitation, including the Commission's recently adopted "E-Proxy" rules and the electronic shareholder forum discussed in this release.

Will these technological advances reduce the costs of proxy solicitations for both companies and those that solicit in opposition to a company?

Yes. Internet access is standard and access will increase. We expect portable document formats to become more efficient, leading to smaller file sizes. Further, we expect that funding to portable document format research and development will increase if changes to the proxy process are adopted.

Should bylaw proposals establishing a shareholder director nomination procedure be subject to a different resubmission standard than other Rule 14a-8 proposals?

No.

If so, what standard would be appropriate and why?

N/A.

As proposed, the federal proxy rules would not establish a threshold for the votes required to adopt a bylaw procedure. This is because the voting thresholds for the adoption of bylaw amendments are established by state law and a company's governing documents. Is this reliance on state law and the company's governing documents appropriate?

No. As we indicated before, we are concerned that reliance on state law may allow for the disenfranchisement of shareholders by entrenched interests.

Should the proxy rules establish a different federal standard for the required vote to adopt a bylaw procedure, such as the majority of shares present in person or represented by proxy and entitled to vote on the proposal, or a supermajority vote?

Yes.

Our proposals assume that the existing exemptions for solicitations are sufficient to include soliciting activities of shareholders that are seeking to form a more than 5% group. Accordingly, the release does not address any such soliciting activities or propose any new rules in this regard. Is our assumption that the existing exemptions are sufficient for the purpose of forming a shareholder group to submit a bylaw proposal correct?

No.

If not, what would be the appropriate scope of any new exemption or amendment to an existing exemption?

N/A

Is there an alternative to the proposal regarding shareholder director nomination bylaws that would provide a preferable method by which shareholders could establish procedures to place their candidates for director in the company proxy materials?

Yes.

For example, should shareholders be able to propose a bylaw amendment only where there has been a majority withhold vote for a specified director or directors, and the director or directors do not resign?

Yes.

If so, what ownership threshold would be appropriate in those circumstances?

5%.

In light of developments that reduce the costs of proxy solicitations by shareholder proponents, such as the adoption of "E-proxy," general advances in communication technology, the proposals concerning electronic shareholder forums, and, in some instances the ability of shareholders to request and receive reimbursement for election contest expenses, is there an alternative to the proposal regarding shareholder director nomination bylaws that would enable shareholders to conduct election contests without incurring the expense of a traditional contest and without being placed on the company ballot?

Yes.

For example, should our proxy rules be amended to permit pure electronic solicitation?

Yes.

Should we amend Rule 14a-2(b)(1) to enable shareholders to solicit a greater number of other shareholders than currently is permitted under the rule (the rule limits the number solicited to ten) without being required to furnish a proxy statement?

Yes.

Would additional amendments to the system for reporting beneficial and other ownership interests in securities be appropriate?

Yes.

If so, what additional amendments would be appropriate and why?

Are there areas where additional disclosures would be appropriate (e.g., with regard to the exercise of voting rights without an economic interest in the underlying security)?

The exercise of voting rights without an economic interest in the underlying security should be disallowed. This is an administrative anachronism created by the fact that publically traded companies do not register individuals as owners of their shares. Shares are held by custodian banks on behalf of investors.

Are there ways in which the system could be simplified (e.g., by combining the reports required to report beneficial and other ownership interests)?

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

The proposed amendments to Rule 14a-8 concerning binding bylaw proposals relating to shareholder nominations of directors on the company's proxy would help shareholders to exercise rights under state law to nominate and elect directors of their choosing. A bylaw amendment that allowed shareholder nominees to be included in the company's proxy materials would reduce the cost for a shareholder to nominate candidates for election on the board since the nominating shareholder would not need to incur the cost of preparing separate proxy materials and mailing those materials to other shareholders. Allowing shareholders to propose bylaw amendments that would enable them to include shareholder nominees on the company's proxy may provide shareholders a more effective voice than simply being able to recommend candidates to the nominating committee or being able to nominate candidates in person at a shareholder meeting.

What are the costs and benefits of a 5% threshold as opposed to alternative thresholds?

Costs	Benefits
Disenfranchisement of a majority of shareholders.	Reduction in the number of frivolous shareholder resolutions a company receives. Cost saving from having to respond to fewer shareholder resolutions.
Increased concentration of economic power in the hands of fewer people, leading to grater income inequality.	
Reduction in the ability of corporations and shareholders to receive meaningful feedback, in the form of shareholder resolutions, on social issues, like Darfur and climate change, that have been shown to have an impact on shareholder value. This may lead to a reduction in shareholder value, since the cost of responding to social issues later in the cycle of concern generally increases.	
Reduction in the ability of corporations and shareholders to receive early meaningful information on ethical concerns at the firm, leading to fraud and malfeasance and a reduction in shareholder value due to fines and class action lawsuits.	
An increase in empty voting and other forms of fraud as hedge funds and other investors attempt to meet the 5% threshold.	
Decrease in Board member and senior executive turnover, leading to entrenched, less able corporate management.	Increase in Board member and senior executive turnover, leading to less entrenched, more able corporate management.
Continuation of corporate fraud and malfeasance.	

How would the private costs of assembling a 5% coalition vary across different types or sizes of companies?

Cost of forming coalition/Size of company	Small Cap	Mid Cap	Large Cap
Cost of identifying potential members	Low	Low	High
Size of coalition	Small	Small	Large
Cost and required frequency of organizational meetings	Low	Low	High
Cost of maintaining interest in the coalition	High	High	Low
Chance of addressing the needs and concerns of each coalition member	High	High	Low
Cost of complying with proposed reporting requirements	High	High	High

What are the potential costs and benefits of facilitating an increase in the variation of nomination rules across companies?

Cost of forming coalition/Size of company	Small Cap	Mid Cap	Large Cap
Cost of identifying potential members	No change	No change	Lower
Size of coalition	No change	No change	No change
Cost and required frequency of organizational meetings	No change	No change	Lower
Cost of maintaining interest in the coalition	No change	No change	Lower
Chance of addressing the needs and concerns of each coalition member	Higher	Higher	Higher
Cost of complying with proposed reporting requirements	Lower	Lower	Lower

See table above.

What are the costs and benefits of potentially moving away from a dual-slate structure in which voting shareholders choose between the management card and the dissident card toward a unitary slate voting system in which voters choose among items on a single proxy card?

Costs	Benefits
Increased cost of coordinating the collection and printing of dissident and management proxy card data	Increased competition
Possibly more effective and successful use of single card structure by disruptive groups, including labor and related narrowly focused interests, corporate raiders, mutual funds, hedge funds, investment banks and others.	No confusion about which card to use for voting purposed. Reduction in time costs associated with voting.
Legitimacy by proximity conferred on every dissident slate.	Reduced confusion about voting implies a truer vote and a more accurate reading of shareholder sentiment.
Time and monetary costs of having management more actively engaged with dissident groups/individuals.	Management more actively engaged with dissident groups/individuals. Do so to see if they can resolve issues before putting them on the proxy card.
Continuation of corporate fraud and malfeasance.	

We request comment on whether the proposals, if adopted, would promote efficiency, competition and capital formation or have an impact or burden on competition.

The proposals, if adopted, would not promote efficiency, competition or capital formation, for the reasons we have outlined above. An increase in Board member and management entrenchment would lead to a reduction in efficiency. The impact or burden on competition would also be negative, since Board and management entrenchment leads to a reduction in strategic options.

Appendix II

Answers to specific questions concerning File Number S7-17-07

Would the proposed amendments to Rule 14a-8(i)(8) provide sufficient certainty regarding the scope of the exclusion?

The release requesting comments on this matter notes that:

"In the AFSCME opinion, the Second Circuit agreed with the Commission's view that shareholder proposals can be excluded under Rule 14a-8(i)(8) if they would result in an immediate election contest. The court, however, disagreed with the view that a proposal can be excluded under Rule 14a-8(i)(8) if it 'establish[es] a process for shareholders to wage a future election contest.'"

We agree with the Court. We believe the Commissions' practices with respect to this issue are outmoded, established in an earlier stage of market development, and not fully cognizant of the need for reform.

As noted above, the proposed amendments to Rule 14a-8(i)(8), if adopted, would <u>not</u> promote efficiency, competition or capital formation, for the reasons we have outlined above. An increase in Board member and management entrenchment would lead to a reduction in efficiency. The impact or burden on competition would also be negative, since Board and management entrenchment leads to a reduction in strategic options and increases the risk of significant corporate fraud and malfeasance.

If not, what additional amendments are necessary?

If the Commission's main concern is that persons using Rule 14a-8(i)(8) to establish a process for shareholders to wage a future election contest might not:

- "assure that investors receive adequate disclosure to enable them to make informed voting decisions in elections," or;
- insure that "disclosures are covered by the prohibition on the making of a solicitation containing false or misleading statements or omissions that is found in Rule 14a-9,"

we suggest the Commission modify Rule 14a-8(i)(8) to note that, if used to establish a process for shareholders to wage a future election contest, these future contests will be bound by all applicable SEC rules and regulations, including and especially Rule 14a-9.

Should the exclusion specify those procedures that the staff historically has found to fall within the exclusion?

Yes.

What additional clarification would be helpful and/or appropriate?

See above.

For further clarity, should the proposed amendments include a specific reference to the interpretation of the exclusion with respect to procedures that could not result in a contested election?

Yes.

