June 21, 2007

Mr. Christopher Cox
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: File No. 4-537

Dear Chairman Cox:

I am writing on behalf of Domini Social Investments in response to the Commission's recent roundtable discussions on the proxy process. We appreciate the Commission's commitment to creating public fora to examine key issues of corporate accountability and shareholder rights. We are deeply concerned, however, by a number of ideas that were expressed during these discussions that suggest that the Commission might be considering rule proposals to curtail or eliminate the right to file precatory proposals under Rule 14a-8. We understand that the Commission has not made any formal proposal at this stage. We are writing to express our strong concern that a number of the proposals presented would be a disastrous step backwards for investors and other stakeholders seeking to build greater accountability into our capital markets. We would be strongly opposed to any material revisions to Rule 14a-8 that would make it more difficult to file precatory proposals addressing social and environmental issues, and request that these ideas be abandoned before they reach the proposal stage.

Domini Social Investments manages $1.7 billion in assets for individual and institutional mutual fund investors who wish to incorporate social and environmental criteria into their investment decisions. We are committed to active engagement with the corporate holdings in our mutual fund portfolios, through conscientious proxy voting, letter writing, direct dialogue and the filing of shareholder proposals. Since 1994, we have filed approximately 150 precatory proposals on a wide variety of social, environmental and governance issues with U.S. corporations, and have engaged in dozens of long-term dialogues with corporate management teams on these issues. Our efforts have resulted in policy changes, public reporting and a greater awareness by key firms of a range of critical issues from sweatshop labor to climate change. We undertake these efforts as fiduciaries, on behalf of our funds' shareholders, and publish quarterly reports describing these activities.

We believe two key elements were missing from the roundtable discussions. The first was a clear articulation by the Commission why changes to Rule 14a-8 are needed. It is our view that the difficult questions surrounding shareholder access to the proxy are substantially different from those surrounding the right to file precatory proposals. We support responsible proposals to improve the ability of

shareholders to nominate directors to the board as a means to encourage greater board accountability. We do not believe, however, that proxy access and the right to file precatory proposals are interchangeable or comparable rights. We strongly urge the Commission to move forward in presenting a reasonable means for shareholders to nominate directors, without eviscerating the right to file precatory proposals. Therefore, although the roundtables raised a number of issues surrounding the proxy process, the focus of our letter is the ability of shareholders to continue to submit precatory proposals that address social and environmental issues under the current rules.

The second element that was missing from the roundtables was a thorough discussion of the mechanics of Rule 14a-8, in practice, and its positive effects on corporate governance and accountability. We offer these comments in the spirit of addressing this latter deficiency.

Before addressing some of the specific ideas presented during the roundtables, we would like to begin by explaining why we believe precatory proposals are necessary. Although we and our colleagues have achieved numerous successes through the use of advisory proposals, we have found that many companies are unwilling to engage in any substantive dialogue until a proposal is filed. It is our practice, and the practice of most proponents we have worked with, to seek to engage in dialogue with a company before filing a proposal. When these efforts fail, the shareholder proposal has been a highly effective way to get management's attention. Many highly productive long-term dialogues with corporate management began with a shareholder proposal. Some of these dialogues began after filing proposals for several years.

Many proposals are withdrawn prior to the annual meeting, because proponents have been able to come to some form of understanding with management. According to Institutional Shareholder Services, in 2006, 367 social-issue proposals were filed, 103 were withdrawn, 56 were omitted by the SEC, and 198 went to a vote.[1] To us, these numbers reflect a healthy process in operation. Perhaps most importantly, it is a process with clearly defined rules that both proponents and companies have learned to work with over the past several decades.

It has been suggested, most notably by Vice Chancellor Strine, that precatory proposals be eliminated in favor of the right to file binding by-law changes. Although we can work to recast some of our proposals as binding proposals if necessary, this is not our preference, and we do not believe this would be the preferred route for the corporate community either. We are not seeking to micromanage these companies or to impose our judgment on the board of directors. Most of the proposals we file seek public disclosure of various social or environmental risks faced by the company, or imposed by the company on its stakeholders. The purpose of these reports is to permit shareholders and other stakeholders to monitor corporate progress on key issues, and also to provide a tool for management to manage and mitigate these risks. It is difficult to argue that these requests would be best framed as binding changes to a company's by-laws. We also believe that it is important to preserve an advisory process that permits the board to gauge investor sentiment, while providing the flexibility to implement proposals based on the

[1] Mathiasen, Carolyn and Welsh, Heidi, "*Social Policy Shareholder Resolutions in 2006: Issues, Votes and Views of Institutional Investors*" (Published by the Social Issues Service, ISS, March 2007)

board's knowledge of the company, or to choose not to implement proposals that, in the board's judgment, would harm the long-term value of the company.

Costs

Several speakers during the roundtables expressed concerns about the costs imposed by the 14a-8 process to companies, SEC Staff, proponents and shareholders that must vote on these matters. We would submit that these costs must be measured against the benefits provided to all parties by the 14a-8 process in the form of improved governance, greater accountability and more meaningful disclosure to investors. Institutional investors that have developed comprehensive proxy voting guidelines do not incur incremental costs for each proposal that is presented, and the time devoted to understanding new issues is part of the job of a responsible fiduciary. If the issues are meaningful, it is time well spent.

It is also important to consider that it is often the companies themselves that are raising these costs through their refusal to engage with responsible investors, and their propensity to submit no-action requests without any reasonable likelihood of success. The current rules require a proposal to garner at least 3% support in the first year to be resubmitted. If a company believes that a proposal is frivolous, it can simply choose to allow the proposal to appear on the proxy, without a statement from the board, and trust the good judgment of its shareholders. In many cases, however, companies choose to fight reasonable proposals that have been vetted numerous times through the no-action process, imposing significant costs on shareholder proponents and SEC Staff. We have seen cases where we believe the challenge was *designed* to impose these costs on proponents, in order to discourage the filing of proposals. We have even seen proposals challenged a year after being denied a no-action request, repeating the very same arguments that had just been rejected. These efforts are clearly a waste of corporate, shareholder and Staff resources. The only deficiency in Rule 14a-8 that this process exposes is the lack of any sanction for filing irresponsible no-action requests.

Other companies choose to allow proposals to appear on their proxy year after year, rather than take the simple steps needed to address the proposal at hand. For example, we are part of a coalition of investors led by Walden Asset Management that has been asking The Home Depot to publicly disclose its EEO-1 data for several years. We believe that this information would provide investors with valuable information regarding the company's efforts to maintain a workplace free from gender and racial discrimination. The company could post this report to its website at negligible cost, as it already provides this information to the federal government. The expense of the 14a-8 process, in this and many similar cases, is clearly the result of a choice by management that is disproportionately borne by the shareholder proponents.

Vote Results

Commissioner Atkins suggested at one stage in the discussions that social-issue proposals have been a failure, as they rarely garner a majority vote. With all due respect to the Commissioner, this is a common misconception of precatory proposals. A vote on a precatory proposal of 51% is of no more

significance than a vote of 49% – the proposal is still advisory, and the board has no obligation to adopt its recommendations. Rather, we believe that a precatory proposal is best understood as a gauge of investor sentiment, and we believe that many corporations view these proposals in this light. The threshold for action varies by company. For example, after several years of filing a precatory proposal with Verizon, culminating in a 33% vote in 2006, the company agreed to annual public disclosure of its political contributions. Such disclosure is now becoming best practice among many leading companies, due to the efforts of a range of investors using the 14a-8 process. The proposals are not getting majority votes, but they are succeeding in significantly enhancing the information available to investors and taxpayers regarding corporate involvement in our political process.[2]

It is also important to place these votes in context. In 2001, my firm petitioned the Commission for the rule that now requires investment advisers and mutual funds to publish their proxy voting policies and procedures, and for funds to publish their votes on an annual basis. Data reveals that the largest mutual fund managers in the country, which are often the largest shareholders, have adopted blanket policies to either oppose or abstain on all proposals that address social or environmental issues – regardless of their merits. There are also broker non-votes, and the recommendations of the largest proxy advisory services to consider. All of this amounts to a built-in bias against social-issue proposals.

Nevertheless, as you are no doubt aware, the average vote results for social-issue proposals has risen sharply over the past several years, not least because ISS has begun to recognize the materiality of many of these issues. We have also found that companies are more willing to engage in meaningful dialogue on these issues, even when it takes a shareholder proposal to initially bring management to the table.

We would encourage the Commission to view these proposals as a laboratory for new ideas, and for new disclosure requirements. For example, over the years, investment advisers, pension funds and other stakeholders have requested that the SEC consider requiring issuers to disclose more information about their social and environmental performance. Numerous proposals are filed each year seeking disclosure that, in our view, ought to be required. New disclosure requirements, or clear guidance to issuers from the Commission, could reduce the need to file many proposals while enhancing corporate accountability. It would not serve investor interests, however, to curtail our ability to seek this information without seriously revisiting these requests for enhanced disclosure requirements.

Ownership Threshold

It was suggested during the roundtables that the Commission should consider revisiting the threshold set by Rule 14a-8 to file a proposal. We believe that the current rule has meaningful and effective safeguards against frivolous proposals, and do not believe there is any reasonable basis for raising the ownership threshold.

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[2] Similarly, although the federal government has not established a prohibition on discrimination against gays and lesbians in the workplace, 430 Fortune 500 companies have adopted formal policies protecting their employees against discrimination based on sexual orientation (http://www.hrc.org/Template.cfm?Section=Work_Life). This significant achievement is largely the result of years of shareholder proposals filed pursuant to Rule 14a-8. A proposal on this topic at Micron Technology received a 55.5% vote last year.

It has been suggested that raising this threshold would winnow the universe of shareholder proposals to more important issues. There is absolutely no basis for this conclusion, which implies that wisdom is directly tied to wealth. This is a profoundly undemocratic assertion that should be rejected outright by the Commission.

A primary basis for this proposal is the theory that larger shareholders are more meaningfully aligned with the success of the company, have more at stake, and are therefore more likely to present issues that are relevant to all shareholders. This argument, while reasonable on its face, is based on at least two misconceptions.

First, the largest shareholders are generally absent from the 14a-8 process, either because the size of their holdings gains them automatic access to the board and senior management, or because they choose to not be engaged in the corporate governance process. The vast majority of social-issue proposals are filed by relatively small shareholders, including investment advisers, labor and religious pension funds, and individuals. Should the ownership threshold be raised in any significant way, the overall number of proposals would be sharply reduced – not the number of *meaningful* proposals.

Second, there is no meaningful way for Staff to test the proponent's true stake in the company. A one million share position may mean little to a firm with $500 billion under management. A 10,000 share position may be quite significant, however, to an individual shareholder with a modest net worth, or to a small mutual fund's investors.

One test of the viability of the ideas presented in a proposal is the proponent's ability to obtain a significant vote. The most important test, however, is her ability to convince management to adopt her request. And while large shareholders can wield influence by threatening to wage an expensive proxy fight or to take over the company, smaller shareholders have only the merits of their argument. Our leverage over corporate management is based on the merit of our arguments, which is the only truly appropriate place for leverage to reside.

One foundation of the current system, which sets a low bar for entry but imposes meaningful limits on the shareholder proposal process generally, is the wisdom that small shareholders should have a voice as well. After all, they are the investors that bear the most risk when corporations fail to address their concerns, and they are the investors with the most limited access to corporate management. We would submit that it is a core value of the Commission to protect their interests.

Length of Ownership

We share the Commission's and virtually every panelist's concerns about short-termism in our markets. A shareholder activist should be looking to raise issues that are consistent with the interests of long-term investors, and with the long-term sustainability of the company.

Some panelists raised the specter of hedge fund activists, and other proponents that short the stock of the company with which they are engaging, or sell their stock after their misguided proposal is adopted. It is

unclear to us whether this is a real issue, or mere speculation by those that are rightfully concerned about the influence of hedge funds. In any case, this practice does not appear to be the norm, and precatory proposals have not been the weapon of choice for hedge funds. What is truly relevant in an attempt to discern the true agenda of a proponent is the proponent's intentions beyond the date of the annual meeting – the shareholder's willingness to continue to hold the company's stock after the proposal has been adopted. It would, however, be impossible to effectively monitor a shareholder's activity after the date of the annual meeting, and no fiduciary will be able to commit to freezing its position in the company for any length of time.[3] Again, each proposal is subject to a vote of all shareholders and the board may always choose to ignore a precatory proposal that is not in the best interests of the company.

If the Commission is concerned that measures are being adopted that harm long-term investors, we would suggest that long-term investors be encouraged to revisit their proxy voting policies. We do not believe that the Commission can devise a workable rule that will prevent such misguided proposals from being filed in the first place, and we do not believe it would be appropriate or desirable for the Commission to seek to interpret the intentions of the proponent. The current rules set reasonable submission requirements, and then allow shareholders to focus on the substance of the proposal.

Materiality

The idea that proposals be subject to some form of materiality test is also, in our view, misguided.

First, it would be virtually impossible for SEC Staff to administer a materiality test with any degree of consistency. The current "ordinary business" exclusion has created significant problems in interpretation. A materiality test would be even more difficult to administer, and more costly in terms of Staff resources. This would be a particular challenge in the context of social and environmental proposals. Most – if not all – social-issue proposals are designed to address long-term risks. There is significant and ongoing debate about how to interpret materiality in this context. We do not believe it would be appropriate for Staff to step into this debate.

Second, each proposal is already subject to a materiality test which has proven to be extremely reasonable in practice. Rule 14a-8 establishes vote thresholds that a proposal must meet in order to be resubmitted each year. This allows investors to determine for themselves which issues are material. Presumably, a new materiality test would be designed to impose a more stringent barrier to submission than 14a-8 currently imposes. Therefore, SEC Staff would be put in the position of excluding certain proposals that had previously garnered significant votes, thereby setting aside the view of the "reasonable investor" in an attempt to determine materiality. We would submit that this would be a risky endeavor, and would raise serious questions about the basis for Staff's determination of materiality.

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[3] Even the unpopular practice of shareblocking in certain European jurisdictions only imposes limits up to the date of the annual meeting.

The current process is a highly effective method of placing issues before investors to seek their approval, and the current vote thresholds have worked to impose a discipline on proponents, improving the quality of proposals that must be clear and relevant to investors in order to be resubmitted.

Electronic forum

One purpose of the roundtable discussions was to seek expert views on an idea to introduce some form of electronic forum to enhance corporate-shareholder communications. Several participants in the roundtable discussions presented a variety of reasons why the Commission should approach this idea with great caution. Although we support any reasonable means to improve communications between corporations and their stakeholders, this idea raises significant concerns for us as well.

First, as noted above, the 14a-8 process has been a highly effective tool to encourage and maintain in-depth, good faith dialogues between concerned investors and corporate management teams. These dialogues are successful because they provide a safe space for the discussion of often sensitive issues, such as factory working conditions, diversity and product safety, issues that often require an atmosphere of trust and confidentiality to resolve. We always enter these dialogues with the goal of some form of public reporting at its conclusion, but we have found time and again over the years that confidential discussions are critically needed in order to work through difficult issues. An electronic forum open to millions of shareholders could never substitute for these dialogues, and it could never substitute for the leverage of a shareholder proposal when a company is unwilling to address a particular issue.

Second, as noted by several roundtable participants, a forum that would be operated by the company would impose significant costs on management, and would likely not be trusted by shareholders. A forum operated by the Commission would impose significant costs on Staff, and could raise potential First Amendment concerns. It would be virtually impossible for such a forum to operate effectively without some prohibition on false and misleading statements, and it would not be advisable to provide issuers with safe harbor for all comments made.

An additional concern that was not raised during the roundtable discussions is the question of fraud. An electronic forum that carries the imprimatur of the Commission would carry a certain presumption of investor protection. Small investors would be more likely to trust comments made – by any party – in such a forum, with the assumption that the SEC was monitoring these discussions and enforcing a requirement that communications be fair and balanced. There is a fairly high risk that these fora would become tools for investors looking to spread rumors in order to manipulate stock prices.

Conclusion

We appreciate the Commission's efforts to open a forum for discussion on how best to achieve meaningful communications between investors and companies. We sincerely hope that the Commission will pursue that discussion without diminishing the value of what has become one of the most effective tools for establishing such meaningful communications, and for addressing some of the most critical issues of our time – Rule 14a-8. Thank you for your consideration of these comments. I would welcome the opportunity to discuss any of these issues with you at your convenience.

Sincerely,

Adam Kanzer
Managing Director & General Counsel