CHARLES J. KALIL
Corporate Vice President, General Counsel
and Secretary

The Dow Chemical Company
2030 Dow Center
Midland, Michigan 48674
989 • 636-1549
FAX ***989 • 636-7711***

November 27, 2006

The Honorable Christopher Cox, Chairman
The Honorable Paul S. Atkins, Commissioner
The Honorable Roel C. Campos, Commissioner
The Honorable Annette L. Nazareth, Commissioner
The Honorable Kathleen L. Casey, Commissioner
U.S. Securities and Exchange Commission
100 F Street, NE
Washington DC 20549-1090

Re: SEC Response to AFSCME v. AIG Decision

Dear Chairman Cox and Commissioners:

I am writing to urge the SEC to issue guidance concerning Rule 14a-8(i)(8) as soon as possible and with an immediate effective date. We are concerned that the recent opinion by the U.S. Court of Appeals for the Second Circuit in *AFSCME v. AIG* (*No. 05-2825-cv, 2006 U.S. APP. LEXIS 22653, Sept. 5, 2006*) imposes untimely and unnecessary uncertainty regarding our annual meeting processes. Specifically, this case has raised serious questions regarding the SEC's current interpretation of Rule 14a-8(i)(8), including whether the Rule can be given effect only if the Commission provides an explanation for its interpretation and why that interpretation changed starting in 1990.

We strongly support the SEC's current interpretation of Rule 14a-8(i)(8) and believe that the *AFSCME* case should not require the SEC to engage in a formal, time consuming notice-and-comment rulemaking. We also believe the SEC's current interpretation remains appropriate and necessary for the proper functioning of the rest of the Commission's regulatory scheme with respect to proxies and the protection of the public. A formal rulemaking could become a divisive effort that would impose a cloud on companies like The Dow Chemical Company, which otherwise must have clear guidance in order to prepare properly for next year's annual meeting.

Ultimately, we do not believe the SEC should use the *AFSCME* decision as a reason to reopen debate on the issue of proxy access. A shareholder access rule would not be in the best interests of the public for a number of reasons:

- This is an area traditionally and appropriately reserved to state law. The SEC does not need to establish a rulemaking allowing shareholders to nominate directors in company proxy materials, as that action would represent an unnecessary change in corporate governance practice.

- Our investors are not well served if every director election turns into a proxy contest. Special interest groups would have the ability to arbitrarily disrupt the governance of corporations, by supporting special interest directors who do not represent the interests of all shareholders or the corporation. Such groups are already well served by existing SEC rules adopted in 2003 that require enhanced disclosure about the director nomination process and facilitate shareholder input.

- The recent changes in corporate governance and securities regulation brought about in the wake of the Sarbanes-Oxley Act of 2002, as well as the many corporate governance changes voluntarily adopted by companies like Dow, obviate the need for shareholder access to company proxy statements.

- Other rules have been proposed that better address the issues purported to be resolved through a new shareholder access rule:

    - the SEC's proposed rules to permit issuers and others soliciting proxies from shareholders to deliver proxy materials electronically, which, if adopted, would streamline the proxy solicitation process and greatly reduce the costs of printing and mailing proxy materials;

    - a NYSE working group's recommendation that the NYSE amend Rule 452 to make the election of directors a "non-routine" matter (meaning that brokers would not be able to vote in director elections absent specific instructions from beneficial owners), which would increase the influence of shareholder votes in director elections.

Dow appreciates the opportunity to express our views on this important issue. Please contact me if you have any questions or if we can provide you with further information.

Sincerely,

Charles J. Kalil

cc: John W. White, Director, Division of Corporation Finance
Brian G. Cartwright, General Counsel

CJK:cjs