October 2, 2007

Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington DC 20549-1090

Re: **Comments on Shareholder Proposals Relating to Directors; File Numbers S7-16-07 and S7-17-07**

Dear Ms. Morris:

These comments are submitted by global institutional investors and their representative bodies with $ 2.4 trillion under management. We are writing to you jointly to emphasize the importance of our comments and the consequences that decisions on these proposals will have on how investors evaluate governance risks at US public corporations. Many of us also submitted a comment letter to the SEC last year (attached) in support of shareholder access to the proxy.

We oppose the rollback of shareholder rights proposed in S7-17-07, which would only reinforce the growing belief amongst global investors that the US regulatory environment favors company insiders at the expense of outside shareholders. We believe that adoption of S7-17-07 would negatively impact valuation of US companies over the long term.

While we support proxy access rights for shareholders, we believe that S7-16-07 sets forth a process which is unworkable, and we do not support it. Our objections include:

- The ownership threshold required for filing a proxy access bylaw resolution should be substantially lower than five percent and not distinguish between short-term and long-term owners;
- The onerous disclosure provisions of S7-16-07 would unduly hinder shareholder communication and effectively preclude use of the process;
- Shareholder forums should not replace use of advisory shareholder resolutions as a tool for communication between boards and the company's entire shareholder base; and
- Advisory shareholder resolutions are an important communication tool that should not be curtailed.

SEC action on these proposals will send a strong signal about whether (a) directors are accountable to shareholders; (b) shareholders at US companies have meaningful remedies when directors are ineffective; and (c) costly and disruptive corporate control contests or acquisitions will remain the primary vehicles for fixing poorly run US companies. In addition, many of us are located in markets that allow shareholders to remove ineffective directors and/or more easily put candidates up for election at the annual meeting. Those shareholder rights are rarely used and have not been disruptive in our markets. However, we believe that they have made our markets stronger and more competitive by boosting

the quality, independence and responsiveness of candidates put forth by companies. Similar rights to provide real director accountability to shareholders are sorely needed in the US.

We hope this letter will be helpful and are attaching detailed comments to further explain our objections to S7-16-07. Feel free to contact Keith Johnson at Reinhart Institutional Investor Services (kjohnson@reinhartlaw.com/608-229-2200) or any of the undersigned if you have questions or need additional information.

Respectfully submitted,

Michael O'Sullivan
President
Australian Council of Super-Investors – Australia

Steve Gibbs
Chief Executive Officer
Australian Reward Investment Alliance – Australia

Ian Jones
Head of Responsible Investment
Co-operative Insurance Society – UK

Councillor Darrell Pulk
Chair of the Forum
Local Authority Pension Fund Forum – UK

Anita Skipper
Head of Corporate Governance
Morley Fund Management Limited – UK

Arno Kitts
Chairman of the Investment Council
National Association of Pension Funds – UK

Frank Curtiss
Head of Corporate Governance
RAILPEN Investments – UK

Giles Craven
General Manager, Trustee Services Unit
Shell International Limited – UK

Peter Moon
Chief Investment Officer
Universities Superannuation Scheme – UK

Detailed Comments on S7-16-07

The following comments on S7-16-07 are submitted in support of the October 2, 2007 letter from global institutional investors and their representative bodies with $ 2.4 trillion under management.

Why We Support Proxy Access

As major investors in public equity markets around the world, we have a broad perspective on how corporate governance practices in the US fit within an increasingly competitive global marketplace. **The harsh reality is that US corporate governance practices are on a relative decline compared to other leading markets.** For example, Governance Metrics International ranks the US behind Canada, the UK and Australia in overall quality of company corporate governance.[1] We see the US as being at a critical point where negative investor perceptions are gaining such momentum that further adverse regulatory developments will affect valuation of US companies relative to other leading markets.

Recent research out of the University of Michigan and Northwestern University has concluded that boardroom culture in the US discourages effective monitoring of company management and actually punishes directors for taking actions to promote shareholder interests.[2] Our experiences (with limited exceptions) have underscored the accuracy of these findings. We see this as especially troublesome because the US legal and regulatory systems are built on the presumption that directors effectively protect the interests of shareholders.

In addition, recent market turmoil emanating from the US has reminded us that the vast majority of shareholder losses (although certainly not all) from corporate fraud over the last decade have occurred at US companies. While passage of the Sarbanes Oxley Act and new stock exchange listing standards did much to address some causal factors and restore investor trust, political winds in the US have recently swung toward rolling back investor protections. This does not give us confidence about future rights of shareholders in the US. Actions of the SEC on the proposals will have ramifications for how we and other investors evaluate US companies.

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[1] See http://www.gmiratings.com/(n34log45tfdzi33jz4bivi55)/Images/RankChart2006.pdf, visited on August 23, 2007.

[2] James D. Westphal and Ithai Stern, *"Flattery will Get You Everywhere (Especially if You are a Male Caucasian): How Ingratiation, Boardroom Behavior, and Demographic Minority Status Affect Additional Board Appointments at U.S. Companies,"* Academy of Management Journal 2007, Vol. 50, No. 2. At page 282, the authors conclude: "These findings have important implications for corporate governance... [Our] findings suggest how director selection processes may contribute to the frequent failure of boards to adequately control management decision making and behavior, which in turn has been implicated in a variety of adverse organizational outcomes, including ill-conceived acquisitions and alliances, failure to initiate timely strategic change, accounting scandals, and white-collar crime."

Retain Current Approach to Determining Filing Thresholds

The threshold for filing a binding bylaw resolution should not be set so high as to effectively preclude access to the proxy. The proposed five percent threshold would do just that and should be lowered substantially. The Council of Institutional Investors has evaluated holdings data on typical large, mid and small cap companies and determined that the ten largest pension fund holders would not own enough of a combined position to meet the proposed threshold.[3] Since pension funds are the largest filers of shareholder resolutions, it appears that S7-16-07 was drafted so as to effectively render its proxy access rights illusory.

We also oppose creation of artificial distinctions between short-term and long-term shareholders. We believe that attempts to use proxy access for short-term manipulation will be rejected in a vote of all shareholders. Other markets that allow proxy access do not preclude short-term owners from nominating directors, and it has not been problematic.

We think the SEC should follow the approach currently taken in its regulations and set the threshold for filing shareholder resolutions as the lesser of a dollar amount or percentage holding, with no prior holding period requirement.[4] That could resolve concerns about a flat percentage holding threshold being prohibitively high. We note that current limitations on resubmission of shareholder resolutions would adequately protect companies from harassment by shareholders that do not have significant shareholder support.[5]

Required Disclosures Should not be so Onerous as to Preclude Use of the Process

The proposal also contains a number of provisions regarding disclosures that would be required of shareholders proposing a bylaw resolution on access to the proxy or submitting a director candidate pursuant to a bylaw that has been adopted. While it is important to provide all shareholders with information relevant to the identity of resolution proponents, we consider the level of disclosure contained in the proposal to be unnecessary.

Submission of a resolution seeking adoption of a shareholder right that is commonplace in other markets is unlikely (by itself) to constitute an attempt to influence or effect a

[3] See the Council of Institutional Investors' comment letter on the proposal.
[4] Current regulations set the threshold for filing a shareholder resolution at the lesser of a holding of $2,000 or one percent of outstanding shares.
[5] Rule 14a-8 already precludes resubmission of shareholder resolutions if they do not receive a minimal level of support in previous proxy votes: (i) less than 3% of the vote if proposed once within the preceding 5 calendar years; (ii) less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or (iii) less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years.

change in control. We fear that many of the detailed disclosure requirements in S7-16-07 would be so onerous as to effectively block use of the new process and hinder shareholder communications.

For example, we see no reason to require detailed shareholder disclosures about communications with other shareholders or the company over the previous year merely because the shareholders are offering a proxy access resolution that implements their existing corporate governance policies or guidelines. Similarly, submission of a board candidate or short slate (without any actual intent to influence or effect a change in control) is implicitly contemplated by the rule and should trigger no more onerous reporting than what is already required for candidates put forth by the company.

Advisory Shareholder Resolutions Should not be Discouraged

We are strong supporters of the use of advisory shareholder resolutions as a much-needed vehicle for directors to receive unbiased input from a company's entire shareholder base – not just the vocal activists that can monopolize debate on many issues. Inclusion of proposals in S7-16-07 that would operate to reduce future use of this important communication tool would only serve to insulate companies from reality. Given that US companies tend to be widely held and that the recent research cited above found it is difficult for directors to represent the interests of shareholders, we see no reason to jettison a mechanism that helps to keep boards in touch with their shareholders and ascertain support for emerging issues.

Resolutions that receive little shareholder support can already be excluded under Rule 14a-8 (cited above) from future proxies and offer no threat to companies. The advisory resolution process is an effective way to channel those debates through a formal process that is visible to both the company and all its shareholders. While we have no objections to experimenting with shareholder forums on a pilot basis, they would not provide an effective means for the entire shareholder base to render a collective opinion to the board and management.

Integrity of the Proxy Process is a Federal Concern

The SEC is mandated to protect investors and to ensure adequacy and integrity of the information available to investors.[6] This mandate makes integrity of the proxy disclosure system and regulation of related communications an issue of Federal concern that falls within purview of the SEC rather than the substantive corporate law of individual states.

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[6]When describing the SEC's authority, the Supreme Court stated, "Underlying the adoption of extensive disclosure requirements was a legislative philosophy: 'There cannot be honest markets without honest publicity. Manipulation and dishonest practices of the market place thrive upon mystery and secrecy.' H.R.Rep. No. 1383, 73d Cong., 2d Sess., 11 (1934). This Court 'repeatedly has described the `fundamental purpose' of the Act as implementing a `philosophy of full disclosure.' " *Santa Fe Industries, Inc. v. Green*, 430 U.S. 462 , 477-78 (1977). Section 14(a) of the Securities and Exchange Act gave the SEC authority to "create such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors."

From our perspective, the US market would be put at a serious competitive disadvantage if regulation of shareholder communication were left to variations of law in 50 different States, let alone to individual company charters and bylaws. Integrity of the proxy system and related shareholder communications are as critical to functioning of the equity markets as is the disclosure of complete and accurate financial information. We believe this is an area where Federal interests are paramount and national minimum standards are necessary. We strongly oppose provisions included in S7-16-07 that would allow delegation of minimum standards for shareholder resolutions and shareholder communications to the states or to individual companies.

October 16, 2006

The Honorable Christopher Cox
Chairman
The Securities and Exchange Commission
100 F Street NE
Washington DC 20549-9303
Email: chairmanoffice@sec.gov

Re: **SEC Review of** ***AFSCME Pension Plan v. American International Group, Inc.***

Dear Chairman Cox:

We write on behalf of some of the largest institutional investment organizations in the world, representing aggregate invested assets of more than $3.4 trillion. A substantial portion of those assets are invested in the United States. We would like to weigh in on the current debate regarding the role of shareholders in the corporate director election process.

Although the meeting has recently been postponed, we are very concerned about implications of the SEC's original announcement that, in light of the decision of the Second Circuit in *AFSCME Pension Plan v. AIG* (no. 05-2825, Sept. 5, 2006), clarification of Rule 14a-8(i)(8) is necessary. We believe that the court's interpretation breaks a significant logjam in the evolution of procedures to encourage more responsive and responsible boards in the United States. We urge the SEC to allow shareholders access to the proxy for resolutions relating to the director election process.

At present, board election procedures in the United States are such that there is little incentive for directors to pay attention to the concerns of their shareholders except insofar as the board feels that such concerns may manifest themselves in a weaker near-term share price. Thus, the broad dialogue between shareholders and directors which is so useful to both and which is commonplace in those countries where shareholders have the power to change the composition of the board, need not take place at all in the U.S.

Many shareholders are effectively discouraged by the current system from putting any effort into providing guidance or direction to the companies they own. Given the enormous cost and uncertainty of a proxy fight, the primary corrective mechanism in the US has become the market for corporate control, in which predatory bidders have an advantage over long-term shareholders who are more likely to be interested in the long-term survival and health of the corporation.

Discouraging effective company dialogue with shareholders also promotes more frequent litigation. Shareholders that have been rebuffed in attempts to curb questionable corporate practices are more likely to pursue legal remedies for their economic disappointments, sometimes at the expense of other shareholders. Not only is this expensive and inefficient, it also discourages open public disclosure from managements engaged in lawsuits and diverts corporate resources from being used as productive capital at times when it may be most needed.

Experience in the UK, Australia and the Netherlands has shown that boards whose members may be removed by shareholders are much more sensitive to shareholder opinion and are much more likely to engage in a meaningful dialogue with the institutions that hold their shares. Moreover, experience in those markets has been that the rights of shareholders to reject nominees, to propose

a nominee to the board, and to call an extraordinary general meeting to vote upon changes in board composition do not destabilize companies, nor do they lead to contested elections. On the contrary, they help to stabilize potentially volatile situations because directors and managements are more likely to take their shareholders' concerns seriously.

Shareholders in the United States have had to deal with a dismaying number of corporate scandals and board-level derelictions of duty in recent years. Many of these would have been prevented had the board members been listening to shareholders as well as management. It cannot be emphasized enough how difficult if is for investors based outside the US to come to grips with the fact that shareholders of US companies lack basic rights which they take for granted in other developed markets. Both in principle and in practice, the American board election procedure is outdated and detrimental to the maximization of long-term shareholder value.

What is worse is that the recent practice of the SEC staff has made it more difficult for a better method to evolve. Under Rule 14a-8(i)(8), shareholders have been denied the right to vote on attempts to address the situation. It is remarkable that this use of the rule, granting companies no-action letters in the face of evolving standards elsewhere as to what comprises an appropriate 'shareholder democracy,' has been used more consistently since 1990 than it had been before. The Court of Appeals recognized that an appropriate distinction exists between using a shareholder resolution as a back-door device to contest a specific election and using a shareholder resolution in order to change the rules for elections so as to further the long-term interests of shareholders. The SEC staff's abandonment of the more favorable treatment accorded shareholder resolutions under 14a-8(i)(8) before 1990 was a step backwards that should be reversed.

We urge the Commissioners to use this opportunity to acknowledge the important distinction suggested by the Court of Appeals and let shareholders play a role in the difficult task of reforming failed business practices. This is a crucial juncture in the history of American business, and an historic opportunity. We urge the Commission to return to the pre-1990 interpretation of Rule 14a-8(i)(8) and grant shareholders access to the proxy for resolutions relating to the process for director elections.

Feel free to contact any of us if we can be of further assistance in addressing concerns relating to implementation of this change.

Sincerely,

Peter Montagnon
Director of Investment Affairs
Association of British Insurers

Steve Gibbs
Chief Executive Officer
Australian Reward Investment Alliance

Jack Ehnes
Chief Executive Officer
California State Teachers' Retirement System

Ian Jones
Head of Responsible Investment
Co-operative Insurance Society - UK

Karina Litvack
Director, Head of Governance & Socially Responsible Investment
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Peter Scales
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London Pensions Fund Authority – UK

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Pernilla Klein
Head of Corporate Governance
The Third Swedish National Pension Fund

Ann Byrne
Chief Executive Officer
UniSuper Ltd. - Australia

Peter Moon
Chief Investment Officer
Universities Superannuation Scheme - UK

cc: The Hon. Paul S. Atkins, Commissioner
The Hon. Roel C. Campos, Commissioner
The Hon. Kathleen L. Casey, Commissioner
The Hon. Annette L. Nazareth, Commissioner
John White, Director, Division of Corporate Finance
Nancy M. Morris, Secretary, Securities and Exchange Commission