IRONFIRE CAPITAL

July 10, 2009

VIA E-MAIL

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.; Room 10900
Washington, D.C. 20549

Re: File No. S7-10-09
Release No. 34-60089
Facilitating Shareholder Director Nominations

Dear Ms. Murphy:

This is a letter to provide comments to the Commission on its proposed rule amendments to facilitate rights of shareholders to nominate directors.

Why These Amendments Are Needed:

Background:

I come at this issue from the perspective of a small retail investor.

In the fall of 2006, I was a casual observer of the Internet company Yahoo! (YHOO) – not a shareholder. I had worked in the software industry from 2000 to 2004 as VP of Business Development and my company had had some lower-level discussions with Yahoo!, and I also had a few acquaintances who then worked for the company. I knew back then, it had a reputation for an

295 Grande Way, Suite 402
Naples, FL 34110
Phone: (239) 273-4888
Fax: (239) 236-0950
Email: emj@ironfirecapital.com
Web: www.ironfirecapital.com

irreverent and relaxed corporate culture without a lot of hierarchy. By 2006, I was doing management consulting and governance advisory work. That summer, I began writing a blog on the topic of leadership and governance and wrote a post on Yahoo!'s leadership in mid-October.

The gist of the post – titled 'Terry Semel: Cause of Yahoo!'s success or along for the ride?' – was that I believed that, while Yahoo! had a number of strengths as a company, it had suffered greatly under the leadership of its current CEO and board.

My argument was that the company had chronically under-performed the market in recent years during Terry Semel's tenure as CEO. At the time of the post, the stock has returned -33% for the prior 7+ years vs. -7% for the NASDAQ. Although the company's performance had rebounded in 2001 – 2003 after the Internet Bubble burst, I argued that its recovery had more to do with the general recovery of the Internet advertising market at the time and not because of specific moves made by Yahoo! management.

Yahoo! had passed up on many opportunities to acquire other fast growing companies including at least 2 reported missed chances to buy Google. Despite these missteps, Yahoo's board had handsomely rewarded Terry Semel. By the time he left Yahoo, by my calculations based on reviewing the company's filings with the SEC, he had received total compensation in excess of $600 million for his 6 years of work.

The response to the blog post generated significant traffic for me. I received several emails from current and former Yahoo! employees who were frustrated with the state of the company and felt it was drifting rudderless.

Later that month, coincidentally, The Peanut Butter Manifesto (an internal memo written by a Yahoo! VP complaining about the company's lack of focus which was leaked to the press) was published on Page One of the Wall Street Journal – proof that the frustration I had heard from several employees existed elsewhere in the organization.

I was familiar with activist investing at the time, because I had studied corporate governance while a Ph.D. student at Columbia Business School. Charles Elson, director of the Weinberg Center for Corporate Governance at the University of Delaware, had introduced me to successful activist investor Ralph Whitworth of Relational Investors LLC several years before. It seemed to me as a casual observer that, if ever there was a great activist target (meaning a company with tremendous inimitable assets who had correctible problems in its board and management and with its focus), Yahoo! was it. I actually called up several activist investors at the time, including Carl Icahn, and urged them to consider an investment in Yahoo. They all declined for various reasons.

I remember wishing I had a $4 billion hedge fund to launch a campaign so that I could raise my voice as a shareholder. I was just a retail shareholder without the financial means to launch a $15 million proxy contest.

Yet, I knew there was deep frustration out there amongst large and small Yahoo! investors. Their palpable desire for change and responsiveness from Yahoo!'s board was matched by a cynicism that anything would ever change – in part because the SEC rules by which Yahoo's board was operating protected that board and management from answering to shareholders. And, truth be told, the average investor – aside from going on to the Yahoo! Finance message board and complaining about the performance of the company or selling shares in the company and walking away from a sour investment – didn't know what he or she could do to really change the situation.

The idea struck me that, in the political world, supporters had figured out how to successfully use the Internet to exchange ideas and rally support for various candidates. At the time, I knew Howard Dean had done this in his attempt to run for President. Ned Lamont also came out of nowhere, in part due to Internet support he received, to win the Democratic nomination in a Connecticut senate contest. President Obama was also clearly successful in using the Web last year in his general election campaign.

It seemed to me that a corporate election wasn't all that different from a political election – at least, I didn't think it should. The thought dawned on me that perhaps I could put out a positive message for how Yahoo! could change to become a better company with a higher stock price and use the Web and various social networking tools to distribute my message and attract supporters who shared my views (or wanted to help add to or edit my views).

I subsequently went out and bought 96 shares in Yahoo! and wrote a first draft of what I called a "Plan B" for Yahoo! I posted it on my blog and recorded myself on a $15 web camera discussing the points and uploaded that to YouTube. I invited people to comment on the plan and support it. By the end of the first week in January 2007 when the material was posted, 3 major business publications had written about the story and traffic to my blog surged. (The heaviest traffic – not surprisingly – came from Yahoo! employees, logging in from their corporate computers.)

In the weeks that followed, someone from the company Wikia (affiliated with Wikipedia) contacted me to ask if they could turn my "Plan B" into a wiki – allowing any supporter to go in and edit the plan (like you would edit a document using Word). Another company, YouChoose.net, asked if they could create a "widget" which would allow people on my site to type in their name, email, and number of Yahoo! shares owned and declare whether they supported "Plan B." After they did so, a line graph appeared showing a running tally of how many Yahoo! shares were in support of the changes in the plan. Eventually, over the next 3 months, retail investors holding about 0.2% of the total Yahoo! shares outstanding – worth about $60 million at the time – pledged their support for change on the website.

The experience taught me a few things. If you give people a way to engage and share their ideas and show what they do and don't support, they will respond. Most of these shareholders were very angry with the incumbent board; they wanted to see change made at Yahoo, but they didn't know what to do. The little website I started gave them a mechanism where they could express themselves.

I also learned through this experience that the group is always smarter than any individual. The ideas which came to me of how to improve the "Plan B" were fantastic. The finalized group plan, which we ended up sending to the Yahoo! board and asking them to act on, was much better than Eric Jackson's original draft plan.

I was especially impressed at the comments from Yahoo! employees or ex-employees (I could never be sure who was saying what when most of the comments were anonymous, but their level of detail certainly suggested that they were employees). Let's not forget that employees are shareholders too. Quite often, I suspect, in under-performing companies, employees see internal problems firsthand and want to improve them to help the company and to see their stock and stock options increase in value. Yet, office politics gets in the way. People often suppress their suggestions, for fear of retaliation or losing their jobs. Instead, they grumble at the water-cooler. When I asked for their comments anonymously, the flood-gates opened. Did some of them have axes to grind for various reasons? I'm sure. Yet, as an outside shareholder, it was very helpful – although a little disconcerting – to hear about the extent of Yahoo!'s dysfunctional problems that needed to be addressed.

Although Yahoo!'s board did receive and review our plan, no observable changes were made. I thought about packing it in. I couldn't run a proxy contest for the June 2007 meeting because I didn't have the money. Also, I'd found out (from Yahoo!'s Corporate Secretary) that, according to Yahoo! corporate by-laws, I was required to have given them notice as of the previous December in order to run a proxy contest. Several people told me "Why bother with this? It's not going to make a difference. Who do you think you are, Carl Icahn? You're delusional if you think you're going to change anything."

At that point, however, I felt a sense of obligation to the 150 or so individuals who had pledged their Yahoo! shares towards our campaign. I wanted our voice to lead to at least some small amount of change at the company. I decided to encourage my supporters to vote strategically against several directors – including all members of the Compensation Committee who had blessed the recent pay packages: Ron Burkle, Roy Bostock and Arthur Kern – who appeared to be most worthy of being replaced by "new blood" on the Yahoo! board.

At first, the chances of successfully convincing 50% of shareholders to vote against any director seemed remote. In 2006, the entire Yahoo! board had been re-elected with 95%+ approval. We also had the issue of broker votes being thrown behind management (which I congratulate the SEC for correcting in time for next year's uncontested elections). I created several clips on YouTube encouraging shareholders to consider the case for voting against several directors and sending a message of their disapproval of what was going on at the company. I also started reaching out to the largest institutional holders of the stock (as their votes would count more than any other shareholders' at that meeting). I was pleased to find the large majority of them were accessible and appeared to take their responsibilities seriously in listening to other shareholders' views, in addition to listening to management's views. Despite me being a retail Yahoo! shareholder holding only 96 shares, they took my call.

I spent $350 on a plane ticket from Florida to Oakland in June 2007 to attend the Yahoo! annual meeting. I spoke up during the Q&A session and I voted. Later, we learned that several directors – including CEO Terry Semel – received over 30% of the votes cast against their re-election (the largest against vote we've seen for a major company since Michael Eisner's last election as CEO of Disney).

The following week, Terry Semel resigned.

It's my belief that these proposed amendments will allow the most unexpected shareholders to step forward with substantive ideas for how to improve our corporations. Their ideas will make our companies stronger – not weaker. They should be adopted.

Arguments for not supporting these amendments:

I would like to examine and respond to some of the arguments which have been put forward in opposition to these proposed amendments:

Argument: Management knows better than shareholders. Commissioner Paredes has said "Shareholders are not well-positioned to run the enterprises in which they invest."

Response: It's true that no shareholder can ever know as much about the business as management or the board (at least I would hope this is always the case). Yet, these amendments are not about turning over the keys of the executive offices to shareholders. Shareholders don't want to run companies; they simply want to have their voices and opinions reflected in those who serve on the corporate board.

Argument: Management needs time to execute its plans and shouldn't have to deviate from its plans to create long-term shareholder value by responding to the whims of shareholders.

Response: Was 7 years of under-performance by Yahoo! sufficiently long enough to give me, as a retail shareholder, the right to complain (even though I hadn't held shares in the company for most of that time)? As of today, it's now been 10 years of under-performance on Yahoo!'s part. Is that long enough? How long does a shareholder have to suffer before he or she can fairly point out that, perhaps, management is not doing a good job of directing the company – and the board isn't doing a good job overseeing management?

Of course, management should be allowed the chance to think longer-term and execute its strategies, but incompetent boards and management teams shouldn't be able to defer being judged for dreadful performance by complaining that they haven't been afforded enough time. These amendments, in my view, strike the right balance between those extremes.

In fact, I don't even think it's necessary to include in these amendments the requirement that a shareholder has to have held shares for a year before putting forward names to appear on the proxy. In my case, I bought my Yahoo! shares in December 2006, shared my views publicly in January 2007 and voted at the shareholders' meeting in June 2007. Were my views less valid because of when I bought my shares? Other longstanding Yahoo! shareholders were able to judge my arguments versus Yahoo's arguments and decide for themselves.

These proposed amendments do not create 'management by referendum.' Rather, they simply ensure that management is truly overseen by representative will of the shareholders, as has always been intended since the creation of the corporation and the writings of Berle and Means.

Argument: "Special interests" will gain an unduly large voice that's not representative of the larger shareholder base.

Response: Carol Bartz – Yahoo's new CEO who, in my estimation, appears to be doing a solid job and is actually implementing several of the points which made up our "Plan B" – at a recent speech in front of the Stanford Directors' College said every shareholder has their own self-interest at heart, so there's no such thing as speaking for the "shareholders' interest." People only speak for their own interests, she's saying. I suppose it is true that we are all self-interested but that doesn't mean that we can't speak out in favor of issues that resonate with others. I don't think that's a bad thing at all. In fact, isn't the entire capital market system (and political system for that matter) built on the idea of individual self-interest leading to the greater good? Should we throw up our hands and say all shareholders are biased so none of them can make a case for change? Or should we trust the entire group of shareholders to decide for themselves whether or not to support an argument? I believe we should trust people to vote for their long-term interests which are also in the long-term interests of the company.

In the case of Yahoo!, let's assume these proposed amendments before the SEC had been in place in 2007. There might have been a shareholder group which put someone forward a director candidate with an interest in human rights in China. There might have been someone nominated by the AFL-CIO who objected to Terry Semel's pay for performance and promised to clamp down on this issue. Or, I might have run, with my "Plan B." At the end of the day, it would have been up to Yahoo!'s shareholders to decide. The large pension funds, institutional investors (like Capital Research, Capital World, T. Rowe Price, Legg Mason), and retail investors would have voted for the directors they thought best reflected their views. I'm quite confident that they would have not supported a candidate they thought would do harm to their investment in the company. That means, they might have supported an incumbent director – even if they were very upset with the prior 7 years of performance – if they judged that person better qualified to represent their long-term interests than the candidate with expertise on human rights in China. Let the people choose.

Let me provide one last example on this point. Commissioner Paredes has said "proxy access might privilege certain shareholders at the expense of others." Beyond the "special interest" groups who might decide to avail themselves of these new amendments, I've heard concerns expressed about "short-term thinking" investors such as hedge funds. Of course, the requirement in these proposed amendments of holding stock for 1 year prior to nominating directors assuages this concern. However, I'd like to examine the case of Carl Icahn – arguably the most well-known activist investor – and his proxy fight against Yahoo! last year.

If ever there was a time when a corporation's shareholders were enraged and should have been willing to throw out the incumbent board and management team, it was last year, after the Yahoo! board dragged its feet in negotiations with Microsoft and turned up its nose at a $31/share buyout offer as being too under-valued (the company current trades at less than half this valuation).

After the talks broke down between Yahoo! and Microsoft last year, Carl Icahn quickly bought a stake in Yahoo! and announced he would run a proxy contest to replace the entire board. Most observers would reasonably say that Carl Icahn was a 'privileged shareholder': he's been running proxy contests for decades; he's a billionaire who could use capital from his fund's investors to pay for his own proxy contest; and he had an incensed shareholder base. Opponents of these proposed amendments would have likely predicted that a "short-termist" and "mob rule" mentality of shareholders would support Mr. Icahn's full slate.

Yet, this didn't happen. As the contest played out, it appears Mr. Icahn thought he would have trouble winning even a few seats on the board and struck a deal with Yahoo!'s board to accept 3 seats on the board in exchange for suspending his campaign (Mr. Icahn himself, plus 2 of Yahoo's choosing from his slate).

Why did he lack support, despite such shareholder antipathy towards the Yahoo! board? Shareholders, despite their anger, expressed concern about the long-term value of Yahoo's shares if they handed over the keys to the company to Mr. Icahn. Some complained to me that they believed Mr. Icahn's plan for running Yahoo! consisted of immediately selling it – at whatever price he could get – to Microsoft. If these proposed amendments had been in place, it's unlikely they would have altered this outcome.

But what if these amendments had been in place previously and a shareholder had come forward and put forward an argument for how the company was asleep at the switch and how it could be better run?

It's an unknowable answer, but I think it's likely that the very challenge – even if it failed to win a seat on the board – would have prodded this board to start asking tougher questions of themselves and their CEO. I think it's unlikely they would have been so generous in approving lavish pay packages for themselves as well as their executives, knowing that they would have faced potential heat at the next year's shareholder meeting. I think the board would have thought long and hard about appointing Jerry Yang as CEO after Terry Semel quit – possibly coming to a different decision. I also think it's likely the board would have approached their negotiations with Microsoft much differently than they did, which would have resulted in a consummated deal at a price much higher than where Yahoo's stock currently trades (even if it was less than the $40/share that they demanded at the time – or a price about 200% higher than its current market valuation).

These proposed amendments could have helped Yahoo!'s shareholders sooner. Yahoo! requires a lot of work to turn itself around – although it can and likely will be turned around in my view. Yet, the work to turn itself around should have started in 2006 – not in 2009. I believe these proposed amendments would have helped this board come to the conclusions back then which it now says are perfectly obvious.

Argument: These proposed amendments will force a "one-size-fits-all" 'governance regime' on corporations. Commissioner Paredes has said: "Simply put, the same corporate governance regime is not necessarily optimal for a struggling Midwest industrial manufacturer, a small-cap biotechnology company in Silicon Valley, and a dominant financial services firm in New York."

Response: I would agree, if, by "governance regime," the proposed amendments required that these 3 types of companies cited by the Commissioner had to all have 15 directors, with the same industry background, and they each had to hold meeting 6 times each year, and pay their CEOs the same base salary and bonus compensation.

Clearly, such governance mandates are inappropriate when imposed from a federal jurisdiction such as the SEC. These kinds of restrictions would make each of these 3 types of companies less competitive with their foreign counterparts who had the opportunity to make different governance choices.

Yet, these rule amendments are far different. They are not about forcing companies into a one-size-fits-all mode of management, but rather about ensuring a corporations' managers and directors are aligned with the long-term interests of shareholders.

Argument: These amendments create the risk of introducing too much conflict on future boards.

Response: Anyone who has served on a board (or group of any kind) knows that there is a balance between having too much conflict in a group and having too little. In the former case, there can be no consensus and little progress made in moving forward on different issues facing the group. In the latter case, there is insufficient debate. Instead, because the atmosphere is too chummy or because the people in the group are unwilling to speak up, the group rubber-stamps the suggestions of the leader (who is the CEO in the case of corporate boards), which can result in sub-optimal decisions.

Based on the breakdowns of several major companies over the last 18 months which have had disastrous, wide-ranging and potentially long-lasting effects on our economy, it appears that several corporate boards suffered from the problem of too little conflict – not too much.

I believe these proposed amendments will move the majority of boards along the spectrum to having more of a balance between too much and too little conflict. However, there doesn't appear to be anything contained in the amendments which would suddenly transform all boards to have extreme amounts of conflict. Ideas will continue to flow freely – and for some boards, perhaps for the first time in a long time.

Conclusion:

In summary, I would like to thank the Commissioners for allowing comments on these proposed amendments to enable greater proxy access by and for shareholders. The truth is, none of us knows where the next great ideas for how companies can best create shareholder value will come from: it might be from a sophisticated hedge fund, a large pension fund, one of the top mutual fund companies, an employee at the company itself, a labor union or even a retail investor. These proposed amendments, in my view, will encourage better ideas to come forward, which help our companies over time become more – not less – competitive.

Proxy access will make the system more egalitarian – not more elitist. There has been talk of implementing proxy access at the Commission for at least 3 decades now. Especially after the collective near economic death experience we've all lived through in the last 18 months, we must take action now to help strengthen our boards and managements – ensuring they represent the desires of the corporation's owners, its shareholders.

Through these proposed amendments, I say may the best ideas rise to the top and be enacted. I'm quite confident that shareholders are wise enough to think, judge, and vote for themselves.

Please adopt the proposed amendments in a speedy manner.

Sincerely,

/Eric M. Jackson/

Eric M. Jackson, Ph.D.
Managing Member
Ironfire Capital LLC

cc: The Honorable Mary L. Schapiro, Chairman
The Honorable Kathleen L. Casey, Commissioner
The Honorable Elisse B. Walter, Commissioner
The Honorable Luis A. Aguilar, Commissioner
The Honorable Troy A. Paredes, Commissioner
Ms. Meredith B. Cross, Director, Division of Corporation Finance
Mr. David M. Becker, General Counsel and Senior Policy Director