August 7, 2007

Nancy M. Morris, Secretary

Securities & Exchange Commission

100 F Street NE

Washington, DC 20549-1090

Re: Comment on Release No. 34-56160; IC-27913; File No. S7-16-07

Dear Secretary Morris,

I am writing to strongly oppose proposed rule S7-16-07 as written. Although often vague, the request for comment essentially proposes a trade-off: a theoretical shareholder right to nominate directors in exchange for ending today's widely used non-binding shareholder proposal process. **For shareowners, this is "heads you win, tales I lose."** Based on my seven years of experience in the field of corporate responsibility, I believe the proposed rules would:

- Virtually end the ability of shareholders to act as owners of American corporations,
- Dramatically slow innovations in corporate governance,
- Do substantial damage to the environment and the public's health,
- Reduce the ability of all investors, especially faith-based investors, to align their investments and values, and;
- Fail to meet the Commission's own implicit reform objectives.

My Experience

I am pursuing an MBA at The Harvard Business School and serve as a consultant to institutional investors who must match financial stewardship with ethical or religious obligations. Previously, I was Program Director for Public Health at The Interfaith Center on Corporate Responsibility (ICCR) and before that, coordinator of The Council for Responsible Public Investment's public health work. I have written extensively on corporate responsibility and public health, most recently in *Corporate Governance: An International Review* (15: 455-466) and *Pharmaceutical Executive* (9/2006). I have been personally involved in over 120 shareholder proposal filings since 2003.

Ending the ability of shareholders to act as owners

All investors, and especially long-term investors such as pension funds, rely on the full range of ownership tools available today. These include, among others, meetings with management, director withhold votes, and filing or supporting non-binding resolutions.

The proposal does not outline specific changes to the non-binding resolution process. Instead it seems to suggest leaving the entire process to management's discretion. In practice, this would end non-binding resolutions. In some cases, the process might technically exist, but each company would have its own set of regulations. In reality, no practitioner could manage the logistics of such a situation. But probably, companies would simply do away with non-binding resolutions altogether.

In exchange, long-term investors get two additional tools: the theoretical ability to nominate directors (if they assemble 5% ownership - an impossibility even for the nation's largest investors), and new online tools, which today do not exist. I would welcome an actual ability to nominate directors or actual working online communication tools. *But neither exists today*.

Investors should not be asked to trade an Alex Rodriguez today for an unknown minor league player whom the SEC promises will be great … eventually.

Ending innovation in corporate governance

Any serious review of the innovations in corporate governance since 2000 shows that shareholders with very small stakes - almost always under 1% - have routinely proposed corporate governance improvements which were supported by a substantial percentage of shareholders. Often they were implemented by directors. There is widespread consensus these innovations have led to improved corporate performance.

For example, this year 140 proposals on majority voting for directors were filed. 50 were voted on, with average support about 49% (according to Institutional Shareholder Services). This high investor interest is one reason we're discussing the proposed rule changes!

Yet under the proposed shifts in the shareholder resolution process, investors will be unable to propose the next corporate governance innovation. Instead, they will send ideas via ill-defined online processes, without public accountability or assurance of fair treatment for all investors. The likely impact: reduced investor confidence and stalemating corporate governance performance on American equity markets.

Damaging the environment and the public's health

Shareholder resolutions not only drive innovation in corporate governance. They also often preview public health or environmental safeguards which later become standard practice or regulatory obligations. The growth of so-called 'social' resolutions has paralleled the growth in corporate governance resolutions. Like governance resolutions, social resolutions are also submitted by small shareholders but often supported by some - or all - of their fellow investors.

Take one case from 2003. A Coca-Cola Company shareholder (the Sisters of Adorers of the Blood of Christ of Wichita, Kansas) proposed the Company increase its disclosures on public health threats, such as HIV, in emerging markets. (Coke is the largest private sector employer on the continent of Africa.) Virtually all (98%) Coke shareholders - and every Coke director - ultimately supported this proposal, despite its author holding less than .01% of the company.

This year, 17 shareholder proposals on global warming were filed. In no case did a group of resolution filers hold 5% of a company. Yet the resolutions received substantial support, such as 29% at General Motors. The filer, GM investor the Sisters of St. Dominic of Caldwell, NJ are ICCR-affiliated shareholders with less than .01% in holdings.

Reduce the ability of churches to align their investments and values

The near-certain end of shareholder resolutions is especially threatening to faith-based organizations. These groups – and others, such as foundations – have specific ethical obligations along with traditional fiduciary duties. These include avoiding pornography (as many Christian investors do), supporting proper environmental stewardship (as people of all faiths attempt to do with their investments), or opposing usury (as many Islamic investors do).

Faith-based investors rely on non-binding shareholder resolutions to express their beliefs. When other investors do not agree, the resolutions simply (and harmlessly) fail. But often, faith-based investors gain widespread support, and constructive shareholder-management dialogue is the result. In either case, the resolutions perform an essential service in the mission of these organizations and in the market at large. Faith-based investors drive much of the innovation in corporate governance reform and give voice to millions of people of faith. They will strenuously oppose limits on their ownership rights.

Failing to meet the Commission's own objectives

According to the Commission, the new rules should accomplish three primary goals: first, to facilitate actual elections of directors, including contested elections; second, encourage new uses of technology in shareholder - management communication; and third, end the position of staff as 'referees' in the non-binding resolution process. Unfortunately, the rules as written will do none of these things.

The 5% threshold for nominating a director is so high as to make the right meaningless, negating the first objective. The new uses of technology are unproven, confusing, and unlikely to be taken up in any great numbers by shareholders or managements, negating the second objective. As for the third, non-binding resolutions would enter a world of increased legal uncertainty as each company adopts its own process. Staff would be called on to referee a greater quantity of even more confusing disputes over shareholders' right to communicate with management and fellow shareholders.

There *are* reforms which might satisfy the Commissions' objections - but they have not been proposed here.

Alternative reform possibilities

The current rules proposal is, at best, undeveloped. But there are productive reform possibilities which would meet the Commission's objectives without sacrificing the ownership rights of shareholders. The Commission could simply add the right to nominate directors (using a realistic threshold, such as 1% of outstanding shares, or a staggered threshold with larger companies requiring lower percentages of shares) to the already existing rights of shareholders to file non-binding proposals. The new online tools - while a low priority, in my opinion - are perfectly compatible with the existing non-binding resolution process.

The Staff has expressed their desire to cease refereeing the conflicts between management and shareholders which "place the Commission's staff at the center of frequent disputes over whether a proposal must be included in the company's proxy materials." Changing Rule 14(a)'s exclusion criteria would reduce this pressure.

Instead of placing the burden on staff, the Commission should allow the voting marketplace to decide on appropriate resolutions. Many resolutions today are excluded as 'ordinary business,' even though most of which are nothing of the sort. The 'ordinary business' exclusion has been transformed into a catch-all. Including those resolutions would cost companies and investors little, and resolutions which fail to gain support would fall off the ballet over time in any case.

Slightly altering voting thresholds might be appropriate in this context. I think most investors would accept thresholds of 5, 8, and 12% instead of 3, 6, and 10%, and would also be comfortable with holding requirements of, say, $25,000 instead of $2000. Spurious resolutions would simply (and harmlessly) fail the thresholds, and serious institutional investors account for an overwhelming majority of resolutions in any case.

In short, an evolutionary - not a revolutionary - approach is called for, and would better satisfy the Commission's needs.

For these reasons, I respectfully suggest the Commission withdraw the rules under consideration until the objectives outlined above are addressed.

Sincerely Yours,

Daniel E. Rosan