



October 1, 2007

Nancy M. Morris, Secretary  
Christopher Cox, Chairman  
U.S. Securities & Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Via FedEx & Email: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

**RE: File Numbers S7-16-07 and S7-17-07**

Dear Commissioner Cox and Secretary Morris:

I write on behalf of F&C Management Ltd. to urge the Securities and Exchange Commission to take additional practical steps to increase shareholders' access to the director nomination process while preserving the rights of shareholders to file precatory proposals under Rule 14a(8). F&C supports regulatory approaches that increase investors' ability to communicate with the directors of their companies and that enhance the accountability of these directors to shareholders.

F&C is a UK-based active manager with just over \$200 billion dollars<sup>1</sup> in assets and with substantial holdings in US corporations. In fact, F&C has a Boston office from which we direct all proxy voting and corporate governance activity for our US holdings and it has been a regular commenter on SEC proposals since 2000.

F&C's views on the two proposals are summarized below:

- We oppose S7-17-07 as it would continue the historic practice of limiting shareholders' access to the board nomination policies and processes.
- We believe that a 5% threshold for amending the board nomination process or nominating candidates is too high for the US market and would provide only symbolic relief to the problem of limited access. It gives undue influence to investors who have large highly concentrated position and short-term horizons.
- The proposed schedule 13G process is overly demanding and unworkable.
- A one-year holding requirements for filing binding bylaw revisions should be eliminated as it creates two different classes of shareholders with different rights.
- The need for majority support from shareholders to change director nomination procedures would provide sufficient protection against special interest groups.
- Electronic communications are a welcome enhancement, but are not an adequate substitute for the annual meeting or for the precatory shareholder proposals process.
- High levels of voting support for precatory proposals demonstrate their utility and importance to shareholders.

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<sup>1</sup> As of 30 June 2007.

- Companies should not be permitted to individualize the shareholder proposal filing process via by-law changes.
- Raising ownership minimums for filing precatory proposals is sensible.
- Re-submission thresholds should not be doubled as it would prevent the re-filing of valuable corporate governance and risk management proposals.

In general, we find it difficult to provide concrete feedback to the Commission on File Numbers S7-16-07 and S7-17-07 as the actual proposed changes to the current process are unclear. We are hopeful that the proposed series of questions contained in these files will lead to a more formal rule-making process rather than to final regulations. As they currently stand, the proposals are imprecise, which is concerning to F&C. As investors, we need more specific proposals on which we can provide feedback as an industry practitioner. However, we would like to respond to the ideas in the current filings.

#### Proxy Access:

The SEC should take steps to enhance shareholder access to the board election process in an effort to address what we regard as the fundamental lack of board accountability that is currently embedded in US board election regulations. Serious shareholders should have an accessible mechanism for ensuring that their interests are more fully represented on boards, a mechanism that does not require aggressive and expensive take-over attempts. In fact, serious shareholders have an *obligation* to nominate directors when there are failures in running the company – and they need a practical process to do so. F&C firmly disagrees with mechanisms to protect board members from criticism or replacement. A board's best protection is to run the company well on behalf of shareholders.

**For these reasons we cannot support proposal S7-17-07 because it allows corporations to exclude proposals that would establish procedures for shareholders to nominate directors directly to the proxy ballot.**

As for proposal S7-16-07, in theory, it allows for greater access for shareholders, but, in practice, it would not actually provide shareholders with a reasonable ability to alter the nomination processes or propose directors. With additional study, we are persuaded that a **5% threshold** for action is far too high for the US market where corporate ownership lacks concentration. While a similar threshold works well in a market such as the UK, it would prove essentially meaningless in the US. According to research by the Council on Institutional Investors (of which F&C is a participant) even if the ten largest pension funds in the US were to combine their holdings they would be unable to clear the 5% ownership threshold at most US corporations. This indicates to us that 5% is too high to serve as a meaningful threshold. In addition, if even the very largest investors will have trouble mustering such a position, the 5% rule would give greater leverage – and disproportionate influence – to certain hedge funds and would disadvantage medium and long-term investors.

In addition, the Commission's suggested requirements for filing a **Schedule 13G** are overly detailed and would make compliance extremely difficult, particularly for the large groups of shareholders that would be required under a 5% threshold. The level of complexity of the required disclosure is unnecessary and serves only to discourage investors from participating more fully in the nomination and election process. As we have suggested in past communications, we would like the Commission to consider adopting a model that allows for either a stated number of shareholders to nominate a Board member or a single shareholder, or small group with a large ownership position. One successful model that the Commission might consider is that of the UK, where the standard is an ownership threshold or 100

shareholders with a common ownership position of at least £10,000 nominal. We believe that an additional option for broad-based investor support would provide appropriate balance were the Commission to adopt a 5% threshold rule. However, the currently proposed Schedule 13G would render such an approach unduly burdensome and impractical. We ask that the Commission substantially simplify the type of data investors would need to disclose in any type of 13G filing.

As for the proposed holding requirements for participating in proxy access actions, we strongly oppose a **one-year ownership requirement**. We believe that differentiating between owners based on their length of holding, the size of their holding or the size of their institutions would be extremely problematic. It violates the one-share/one-vote principle that is the basis of sound corporate governance by creating different classes of shareholders with the ability to take different actions.

F&C rejects arguments that improving proxy access is a tool to allow special interest groups unfair advantage at corporations we own. Rather, we believe that current requirement for a **majority vote on any by-law revision to the board nomination process would provide sufficient protection for companies and directors**. Shareholders proponents would need to secure majority support from voting shareholders in order to either amend by-laws to allow for shareholder-generated director nominations or to actually elect an alternate candidate following a by-law revision. The hurdle of achieving majority support for a by-law revision or a candidate that is opposed by management is high and will most certainly prevent special interest groups from exercising undue influence on our boards. However, were a majority of shareholders to agree that a new, more open, process or a different director were needed then making changes at a particular company would surely be appropriate and desirable.

#### Electronic Forums:

F&C supports strongly efforts by the Commission to update standards of company, board and shareholder practice to take greater advantage of the opportunities offered by electronic tools. We believe that electronic forums, chat rooms and email boxes for questions and compliance concerns are reasonable and necessary. However, we do not believe that an electronic discussion can adequately substitute for a structured process of voting on management and shareholder proposals at the annual meeting. We believe there is substantial value in shareholders having at least one opportunity each year to address their directors in person and to petition the entire shareholder base with proposals related to corporate governance and strategy. We view electronic discussions as a new opportunity for accountability and communication, but not as a substitute for a rigorous, formalized, corporate governance process.

#### Shareholder Proposals:

Advisory resolutions provide an opportunity for shareholders to communicate their priorities for corporate governance reforms or risk management and should not be curtailed. In the absence of the ability to nominate directors to the proxy or to elect directors by a binding majority in the US, shareholder proposals have proved a useful vehicle for shareholders to **communicate with boards**. In fact, the growing numbers of shareholders that vote in favor of precatory proposals indicate their widespread utility to shareholders. In our view, there has been too much emphasis on the so-called "special interest groups" that file proposals and not sufficient weight given to the fact that these proposals often gain broad-based investor support and, increasingly win majority support.

Non-binding proposals have also been useful in bringing **emerging business issues** to the attention of directors, management and fellow shareholders. For example, over the past years, precatory proposals

have played an important role in notifying corporations of the need to measure and reduce their own carbon emissions and develop a strategy for operating in carbon-constrained markets. Today, US corporations face divergent state and international regulatory regimes to control carbon emissions as well as the possibility of future US federal controls. In our view, companies are better prepared to meet these controls thanks to strategic actions encouraged by non-binding proposals and other shareholder engagement.

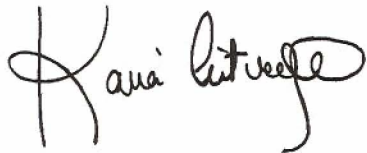
While the volume of shareholder proposals does require substantial time for investors that engage in thoughtful, company-specific voting, on balance, the results of such proposals have led to better governed corporations. Therefore, we urge the SEC to avoid fundamental changes that would prevent shareholders from accessing the proxy via advisory proposals. In particular:

- F&C opposes suggestions that boards be allowed to individualize the shareholder resolution filing process via bylaw changes. In states that allow boards to amend bylaws without shareholder approval this would result in the unilateral ability of directors to revoke this important right for shareholders. In addition, F&C opposes the ability of one group of shareholders to **vote away the filing rights of future shareholders**, as would be possible under this type of provision. We agree that the current filing regime is time consuming, difficult and overly legalistic and should be simplified and streamlined. However we believe that would not be achieved by allowing each company to establish different and varied standards or to prohibit shareholder proposals entirely.
- F&C supports the idea of **raising the ownership minimum** for filing shareholder proposals. This seems like a sensible amendment of current provisions to bring the ownership levels in line with inflation. However, we strongly oppose dramatic increases that would prohibit smaller investors in US companies from having access to the proxy ballot for their non-binding resolutions.
- **Resubmission thresholds** have proven to be an effective method for preventing repeat nuisance proposals and for allowing shareholders an opportunity to persuade fellow investors without burdening them with the same unpopular proposals. F&C has concerns that the SEC proposal to more than double the resubmissions thresholds is too dramatic and would effectively bar a number of precatory resolutions that have grown investor support over time. In particular, corporate governance reforms or proposals related to emerging good practice in corporate governance or in social and environmental risk management may take some time to be properly understood and supported by the investment market. For example, as described above, climate change issues have become increasingly material to businesses operating in our global markets, and shareholders have been sensible to raise issues related to climate management for some years. Were resubmission rates substantially altered it might undercut the very purpose of the shareholder proposal process – for shareholders to communicate with directors on emerging or pressing issues of concern. F&C believes that the fact that these resolutions are advisory is sufficient protection for boards that would prefer not to implement the strategies exactly as they are proposed.

In general, we consider shareholder rights to be far more limited in the US than they are in the UK and in other developed markets. Therefore, the precatory shareholder resolution process plays an important role in facilitating communication between owners and companies. We would oppose any final SEC proposals that curtailed this avenue without a substantial and fundamental strengthening of shareholder rights in other areas – a strengthening which would need to include a much more meaningful revision to director nominations to ensure greater access for shareholders.

We appreciate the opportunity to express our views on these issues. We thank you very much for your attention to this letter.

Sincerely,

A handwritten signature in black ink that reads "Karina Litvack". The signature is written in a cursive, flowing style.

Karina Litvack  
Director, Head of Governance & Sustainable Investment

cc: Rupert Della-Porta, Head of US Equities, F&C Management  
Senator Edward Kennedy, Massachusetts  
Senator John Kerry, Massachusetts  
Representative Stephen Lynch, Massachusetts  
Senator Christopher Dodd, Chairman, Committee on Banking, Housing & Urban Affairs  
Senator Richard Shelby, Ranking Member, Committee on Banking Housing & Urban Affairs  
Representative Barney Frank, Chairman, Committee on Financial Services  
Representative Spencer Bachus, Ranking Member, Committee on Financial Services