

October 1, 2007

Via electronic delivery: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Ms. Nancy M. Morris, Secretary  
Securities and Exchange Commission  
450 5th Street, N.W.  
Washington, D.C. 20549

Re: File Nos. S7-16-07 and S7-17-07

Dear Ms. Morris:

We are writing on behalf of Calvert Group, Ltd. (Calvert)<sup>1</sup> to provide comments on the Securities and Exchange Commission (Commission) Rule Proposals regarding shareholder proposals,<sup>2</sup> specifically to respond to the Commission's request for comments with respect to non-binding shareholder resolutions.

However, before we delve into a discussion of non-binding shareholder resolutions, below please find our comments on the substance of the two separate Rule Proposals.

The Proposed Rule: "Shareholder Proposals Relating to the Election of Directors" would allow the exclusion of such shareholder proposals. Presenting the opposite position on the issue is the companion Rule Proposal: "Shareholder Proposals," which would allow shareholder proposals for bylaw amendments regarding the procedures for nominating candidates to the board of directors to be included in company proxy materials. This right, however, would be tempered by the requirement that a shareholder own 5% of a company's shares for the past year, along with having to meet other current threshold requirements, in order to file a resolution to nominate a director. Recognizing that the election of directors is an important aspect to shareholder democracy in that "[d]irectors have authority over the most fundamental issues of corporate governance today, while investors, regulators, courts and others have all recognized the critical role directors play in the life of a corporation,"<sup>3</sup> Calvert believes that shareholders should have an unfettered right to submit shareholder resolutions related to the election of directors. Thus,

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<sup>1</sup> Calvert Group, Ltd. is a financial services firm specializing in fixed income and socially responsible investing by sponsoring a family of open-end registered investment companies, with over \$16 billion in assets under management, including \$6.5 billion in socially screened assets.

<sup>2</sup> Shareholder Proposals, SEC Rel. No. 34-56161; IC-27914; File No. S7-17-07 (July 26, 2007) and Shareholder Proposals Relating to the Election of Directors, SEC Rel. No. 34-56160; IC-27913; File No. S7-16-07 (July 26, 2007).

<sup>3</sup> Report and Recommendations of The Proxy Working Group to the New York Stock Exchange (NYSE), June 5, 2006.

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Calvert does not support either Proposal as we believe that both would diminish shareholder rights.

**Of even greater concern to Calvert, though, is the Commission's request for comments on the use of non-binding shareholder resolutions. The tenor of the questions indicates an unacceptable threat to the continued ability of shareholders to file non-binding, advisory resolutions.**

Earlier this year, Calvert became alarmed by publicly reported deliberations about the continuation of the Commission's role in stewarding the shareholder proposal process and in the application of the rules as they govern the inclusion of advisory shareholder resolutions, pursuant to Rule 14a-8 under the Securities and Exchange Act of 1934. The discussions indicated a possible challenge to the right of shareholders to file such advisory resolutions. Then in July, the Commission introduced the "Shareholder Proposals" Rule Proposal that informally questions the appropriateness, usefulness and continued ability of shareholders to file advisory resolutions. While not directly proposing changes to the current Proxy Rules that allow advisory resolutions, the Commission suggests a number of new approaches that call into question the Commission's support of such non-binding resolutions.

Calvert respectfully cautions the Commission against the adoption of any amendments to the Proxy Rules that would impact the use of advisory resolutions, without first having any proposed changes submitted for public consideration and comment, as part of a formal rulemaking process.

For more than 30 years, investor communications with companies have been enhanced through the shareholder resolution process. Advisory shareholder resolutions are an essential component of the U.S. system of corporate governance and democracy. While submitting advisory proposals to the corporate proxy is only one of a number of tools that Calvert and other investors use to communicate with corporate management, it is a critically important one.

Thus, Calvert wishes to voice its concerns over the nature of the suggested approaches as, in our view, the adoption of any of these concepts as an alternative to the current process would severely restrict the advisory shareholder resolution process. Calvert strongly advocates for the continuation of the use of advisory resolutions, citing their demonstrated effectiveness and relevance to corporate transparency and accessibility, as well as the demonstrated importance of advisory resolutions in promoting shareholder advocacy and dialogue.

As Calvert noted in its prior letter to the Commission,<sup>4</sup> the Proxy Rules have a long history, filled with periodic reforms and re-interpretations, with cycles such as this,

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<sup>4</sup> Calvert's letter dated July 23, 2007, is attached under [Appendix A](#).

when the investing public, corporate management, members of Congress, and the Commission itself, question the efficiency and effectiveness of the rules. Yet, over the years, shareholder communications with corporate management have been stewarded through the Proxy Rules, serving as the arbiter of best practices on many issues (managing climate change, disclosure of political contributions, and ending employment bias, for example).

The support that advisory resolutions have garnered in recent years underscores the growing relevance investors see in the range of issues, including increased transparency, greater accountability to shareholders and the impact of climate change on company operations that are addressed in shareholder proposals. Social and environmental proposals now frequently earn more than 25% support, while governance issues routinely earn support of 40 to 50% and higher.<sup>5</sup>

As stated previously, Calvert does not consider the questions related to advisory shareholder resolutions to constitute formal rulemaking proposals on the part of the Commission, nonetheless, we are providing our comments to voice our concerns with three broad concepts that we fear could possibly be formulated into an alternate process under the Proxy Rules:

- Ability to “opt-out” of the advisory resolution process

**Calvert opposes the idea of allowing companies to opt-out of the advisory resolution process.** The SEC has an important role to play in establishing consistent rules and a level playing field for all companies and shareholders. During our three decades as an investor which has been active in the resolution filing process, we have engaged scores of companies in productive dialogue on issues ranging from executive compensation and board composition, to climate change. There have also been cases when companies have been unresponsive to our entreaties, and we have relied upon the advisory resolution process to initiate a dialogue. Allowing companies to opt-out of the process may mean that the least responsive companies will become even less so. The advisory resolution process provides an essential means to engage companies.

The importance and effectiveness of advisory shareholder resolutions is illustrated by two important examples from the past year. Since 2005, the Carbon Disclosure Project (CDP) has surveyed the entire Standard & Poor’s (S&P) 500 Index universe of companies (as well as companies from other major indices around the world). 284 institutional investors with assets of \$41 trillion under management, representing

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<sup>5</sup> In 2006, four (4) of the seven (7) resolutions filed by Calvert on social or environmental issues that went to a vote earned 25% support or greater. In 2007, six (6) of nine (9) social or environmental resolutions filed at Calvert received this same level of support. For all proponents during the 2007 proxy season, the forty-two (42) advisory resolutions requesting increased shareholder oversight of executive compensation earned an average of 41.6% support.

more than one third of total global invested assets, are endorsing the CDP survey which asks companies to disclose investment relevant information related to climate change. More than 200 companies in the S&P 500 Index did not respond to this call from this broad coalition of investors for climate change information. However, Calvert has been able to utilize the advisory resolution process and begin a dialogue with corporate management at two firms (both of which are Fund holdings) that have since provided the requested disclosure. This example illustrates the importance of a process that can focus corporate management on an issue on which investors wish to dialogue.

- Electronic Shareholder Forums

**Calvert believes that an electronic forum could enhance shareholder and management communication. However, this should not be a substitute for the non-binding shareholder resolution process.** The current process provides for a focused and structured discussion of relevant issues as proponents must present their ideas in a clear and persuasive manner within limited space, and the resolution must have a clear request that the company take a specific action.

Nonetheless, an electronic chat room is an idea with a number of unanswered questions. It is difficult to imagine a web-based chat room providing a focused discussion or debate on an issue of importance. Such a forum would likely lead to unmanaged discussions that provide little guidance to corporate management or a board in regard to shareholder sentiment. The current advisory resolution process allows investors to study an issue and provides companies with the opportunity to respond directly to investor concerns.

- Increase in resubmission thresholds

The Commission seeks comment on the resubmission thresholds for shareholder resolutions which presently stand at 3%, 6% and 10% vote levels. The Commission asks if the threshold should be raised to 10%, 15% and 20% levels.

**Raising the resubmission threshold would make it harder for new issues of concern to develop over time. The current process eliminates proposals that do not generate enough support,** but it does provide proponents the opportunity to educate fellow investors of the validity of their concerns. There are a range of issues that received low levels of support in the first years after they were introduced but which earned higher vote totals once investors gained an understanding of the subject matter.

Calvert disagrees with the notion that the shareholder resolution process creates what some have called a “tyranny of the minority.” Proponents must make the business case to other investors in order to win support for a particular proposal. If investors

do not see the relevance of an issue, they will not vote in support of the resolution, and the current thresholds are more than enough to deter the submission of frivolous resolutions. This is not tyranny, but a method to enhance corporate accountability to the owners of the company. The process allows investors to determine which topics are worthy of their support. In turn, advisory shareholder resolutions are a fundamental means of communication through which corporate management and boards can understand the concerns of shareholders.

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Overall, Calvert finds none of the suggested approaches to be acceptable alternatives to the current process of allowing advisory shareholder resolutions as an effective means to dialogue with a company and to bring issues of concern before other shareholders. The Commission must employ the Proxy Rules to, as it has stated, “make a company's managers more responsive to the shareholders. That, in turn, could better align the interests of the company's management with that of shareholders, possibly resulting in an improvement in the company's operations and the market price for its shares.”<sup>6</sup>

Calvert strongly discourages the Commission from taking any action that would undermine the ability of shareholders to raise governance, environmental, and social issues through the shareholder resolution filing process. We appreciate the need to maintain a balance between the interests of management, Commission Staff and shareholders; however, the Commission must not abdicate its role in the shareholder proposal process, nor take any action that would diminish shareholder’s access to shareholder resolutions. The Commission’s focus should be on enhancing corporate accountability and transparency. To do anything other than continuing to promote the use of non-binding shareholder resolutions would run contrary to the Commission’s commitment to investors.

Calvert welcomes the opportunity to work with the Commission to improve the Proxy Rules, and to move them further in the direction of greater corporate transparency and accessibility, as well as greater shareholder advocacy and democracy ... in an effort to continue to protect the shareholder’s ability to participate in legitimate issues of governance and corporate responsibility through the shareholder proposal process.

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<sup>6</sup> Amendments to Rules on Shareholder Proposals; Proposed Rule, 17 C.F.R. pt 240, Cost Benefit Analysis, 50698 (1997) (proposed Sept. 26, 1997).

Securities and Exchange Commission

October 2, 2007

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Should you like to further discuss the points raised in this letter, please feel free to contact William M. Tartikoff or Ivy Wafford Duke at 301-951-4881.

Sincerely,

/s/ William M. Tartikoff

/s/ Ivy Wafford Duke

William M. Tartikoff  
Senior Vice President and  
General Counsel

Ivy Wafford Duke  
Assistant Vice President  
and Associate General Counsel

APPENDIX A

July 23, 2007

Nancy M. Morris, Secretary  
Securities and Exchange Commission  
100 F St., N.E.  
Washington, D.C. 20549

Re: Upholding Shareholder Democracy through the Proxy Process

*A UNIFI Company*

Dear Ms. Morris:

We are writing on behalf of Calvert Group, Ltd.<sup>1</sup> (“Calvert”) to express our interest in recent Securities and Exchange Commission (“Commission”) discussions regarding the proxy process. Our comments address publicly reported deliberations about the continuation of the SEC’s role in stewarding the shareholder proposal process and in the application of the rules as they govern the inclusion of advisory/non-binding shareholder resolutions, pursuant to Rule 14a-8 under the Securities and Exchange Act of 1934 (“Proxy Rules”).<sup>2</sup>

At the same time, we have also read encouraging reports that the Commission is “working on a proposal that could increase shareholder influence over how corporations are run.”<sup>3</sup> We choose to consider this as a positive sign that the Commission is not planning to abdicate its role in the proxy process, nor is planning to take any action that would diminish shareholder’s access to shareholder resolutions. We caution, however, that the promise of increasing shareholder interaction with companies will be an empty one if the Commission’s “new proxy

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<sup>1</sup> Calvert is a financial services firm specializing in fixed income and responsible investing by sponsoring a family of open-end, registered investment companies (“mutual funds”). Calvert has over \$15 billion in assets under management and offers 42 mutual fund portfolios with a broad range of investment objectives. At Calvert, we believe that healthy corporations are characterized by sound corporate governance and overall corporate social responsibility. In our view, companies that combine good governance and corporate social responsibility avoid unnecessary financial risk and are better positioned for long-term success. Sound corporate governance, of course, requires that the owners of a corporation (the shareholders) and their elected representatives (the board of directors/trustees) exercise conscientious oversight over corporate managers and hold those managers accountable for their actions.

<sup>2</sup> Securities and Exchange Commission, Briefing Paper: Roundtable on the Federal Proxy Rules and State Corporation Law, May 7, 2007.

<sup>3</sup>“Lawmakers Probe Commissioners on SEC's Direction,” Ignites, June 28, 2007.

rules”<sup>4</sup> serve to further disenfranchise shareholders by disallowing precatory resolutions.

Thus, we are writing to urge you to not take any actions at next Wednesday’s meeting that would further limit shareholder access to the proxy statement.<sup>5</sup> Specifically, Calvert supports the right of shareholders to file advisory/non-binding resolutions and strongly discourages any action that would undermine the ability of shareholders to raise governance, environmental, and social issues through the shareholder resolution filing process. Calvert agrees with the Commission that “the purpose of the rule is to ensure proper disclosure and enhance investor confidence in the securities markets *by promoting proposals raising significant issues that are relevant to the company and its business.*”<sup>6</sup> (emphasis added).

Over time, Calvert has worked in concert with the Commission Staff and the Commissioners themselves, in ensuring that a shareholder’s right to engage in dialogue with the management and the boards of companies is fulfilled. This interaction has been based on the understanding that Calvert has long been a proponent of a shareholder’s right to a voice in the management of a company, be it through true representation on the board or through shareholder resolutions. (Please refer to Attachments A through F for prior communications with the Commission regarding proxy process reform.)

The Proxy Rules have a long history, filled with periodic reforms and re-interpretations, with cycles such as this, when the investing public, corporate management, members of Congress, and the Commission itself, question the efficiency and effectiveness of the rules. Yet, over the years, shareholder communications with corporate management have been stewarded through the Proxy Rules, serving as the arbiter of best practices on many issues (managing climate change, disclosure of political contributions, and ending employment bias, for example). In light of the recent discussions during the Commission’s Proxy Process Roundtables, Calvert has become alarmed over suggestions that the SEC may exit from the shareholder proposal process or alternatively, may resort to limiting the accessibility of the corporate proxy for shareholder resolutions that are advisory/non-binding in nature. Neither of these alternatives is acceptable.

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<sup>4</sup> SEC Chairman Christopher Cox, House Committee on Financial Services, “A Review of Investor Protection and Market Oversight with the Five Commissioners of the Securities and Exchange Commission,” June 26, 2007.

<sup>5</sup> SEC Sunshine Act Meeting Notice for July 24, 2007 Open Meeting, July 18, 2007.

<sup>6</sup> Amendments to Rules on Shareholder Proposals; Proposed Rule, 17 C.F.R. pt 240, Request for Comments, 50695, Sept. 26, 1997.



Calvert engages in shareholder advocacy to make good companies better long-term investments. As a true “end user investor,”<sup>7</sup> Calvert invests with good companies, initiating a dialogue with corporate management over matters with social policy implications as they arise.<sup>8</sup> Calvert recognizes the board’s power and authority in managing the business of the company and fulfilling its fiduciary duties towards shareholders. In turn, Calvert Funds, as shareowners, have the right to make proposals to fellow owners at the company’s annual meetings. Advisory/non-binding shareholder resolutions request that the Board consider significant social policy matters, an action that is consistent with general state corporate law that allows a shareholder to bring before a meeting, anything that is proper for a shareholder to act upon.<sup>9</sup> Such precatory resolutions raise significant social policy issues that go beyond the day-to-day business matters of the Company (as administered by the officers/management of the company, under the supervision of the board), and accordingly, are proper subjects for shareholder consideration. Thus, it is within the parameters of state law, that shareholders submit precatory resolutions, requesting that the governing board consider taking an action, as opposed to outright demanding that action be taken (which would run counter to state law). These types of precatory shareholder resolutions must continue unfettered by the Proxy Rules.

The Commission’s comments during the May roundtables that the Proxy Rules “place[s] the Commission’s staff at the center of frequent disputes” over the interpretation of the Proxy Rules, demonstrates the recurrent challenge of obtaining a balance between the interests of the shareholder and that of corporate management which do not wish to address the legitimate concerns of its owners. In the view of the Staff, the Proxy Rules may not be the ideal venue to deal with controversies regarding shareholder rights. Calvert cannot agree.

The Commission’s role in this area is a vital one as it facilitates shareholder access by allowing shareholders to be informed of and have an open dialogue with management and the board. This dialogue between the shareholder and the company is often facilitated through the shareholder proposal process, with much success.<sup>10</sup> We strongly believe that the Commission and its Staff are in the best position to carryout its commitment to “provide[s] an avenue for communication between shareholders

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<sup>7</sup> Vice Chancellor Strine, Briefing Paper: Roundtable on the Federal Proxy Rules and State Corporation Law, p. 23 at 12, May 7, 2007.

<sup>8</sup> Please note that even recognizing that all shareholder proponents are not such long-term investors, nor promote legitimate social issues for shareholder consideration, the existence of short-term shareholders who submit frivolous proposals burdening the Staff should not serve to disenfranchise other legitimate proponents, such as Calvert.

<sup>9</sup> See, e.g., Del. Code Ann. Tit. 8, § 211(b).

<sup>10</sup> For the last twelve month period, Calvert has submitted 26 shareholder resolutions as the lead filer. Of these, 13 resolutions were withdrawn following successful dialogue with the respective company. Only three (3) of these resolutions became the subject of SEC No-Action requests, where ultimately one request to omit the resolution was granted and the other was not, and the third request was withdrawn by the company after Calvert was able to reach an agreement with them.

and companies, and among shareholders themselves.”<sup>11</sup> We submit that such measures do not require the exit of the Commission from the conversation, nor the elimination of precatory resolutions.

In allowing this dialogue though, Calvert acknowledges that safeguards and stop gates must be objectively provided so as to not overburden the process. However, intermittent deterioration of the proxy rules (be it through a significant increase of the threshold necessary to re-file a resolution or an increase of the monetary value of shares that an shareholder must hold in order to file a resolution), is not an acceptable safeguard if it is simply a drawn-out process of eroding shareholder access by making incremental changes that ultimately transform the standards to an unreasonable level. Rather, we believe that the Commission must, as it has stated, “make a company’s managers more responsive to the shareholders. That, in turn, could better align the interests of the company’s management with that of shareholders, possibly resulting in an improvement in the company’s operations and the market price for its shares.”<sup>12</sup>

Calvert welcomes the opportunity to work with the Commission to improve the Proxy Rules, while moving them further in this direction in an effort to continue to protect the shareholder’s ability to participate in legitimate issues of governance and corporate responsibility through the shareholder proposal process.

Should you like to further discuss the points raised in this letter, please feel free to contact William M. Tartikoff or Ivy Wafford Duke at 301-951-4881.

Sincerely,

*/s/ William M. Tartikoff*

William M. Tartikoff  
Senior Vice President and  
General Counsel

*/s/ Ivy Wafford Duke*

Ivy Wafford Duke  
Assistant Vice President  
and Associate General Counsel

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<sup>11</sup> Final Rule: Amendments to Rules on Shareholder Proposals, SEC Release No. 34-40018, May 21, 1998.

<sup>12</sup> Amendments to Rules on Shareholder Proposals; Proposed Rule, 17 C.F.R. pt 240, Cost Benefit Analysis, 50698 (1997) (proposed Sept. 26, 1997).

cc: Chairman Christopher Cox  
Commissioner Paul S. Atkins  
Commissioner Roel C. Campos  
Commissioner Annette L. Nazareth  
Commissioner Kathleen L. Casey

bcc: Congressman Barney Frank  
Senator Jack Reed  
Senator Christopher Dodd  
Congressman Paul E. Kanjorski  
Congresswoman Maxine Waters  
Congressman Melvin L. Watt  
Representative Brad Sherman  
Congresswoman Carolyn Maloney  
Congressman Brad Miller

## ATTACHMENTS

(Omitted from this Appendix A)

- Attachment A – December 6, 1996 – Letter to then-Commissioner Steven M. H. Wallman regarding the SEC’s interpretation of Rule 14a-8(c)(7).
- Attachment B – February 6, 1997 – Letter to then-Chairman Arthur T. Levitt, Jr. as follow-up to communications with Commissioner Wallman.
- Attachment C – November 25, 1997 – Comment letter on File No. S7-25-97, regarding amendments to rules on shareholder proposals.
- Attachment D – March 2, 1998 – Letter regarding No-Action Position Issued to The Home Depot, Inc.
- Attachment E – June 12, 2003 – Comment letter supporting adoption of new rules to permit shareholder-nominated director candidates to appear in the corporate proxy statement and proxy ballot.
- Attachment F – September 15, 2003 – Comment letter on File No. S7-14-03, regarding nominating committee functions and communications between security holders and boards of directors.