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September 13, 2007

Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington D.C. 20549-1090

Re: Release No. 34-56160 (File Number: S7-16-07) and Release No. 34-56161 (File Number: S7-17-07)

Dear Secretary Morris:

I write on behalf of the Boards of Trustees of the New York City pension funds (the "funds") to provide comments on the Securities and Exchange Commission's ("SEC" or "Commission") proposed rules: (1) Release No. 34-56160 which would enable shareholders to include in company proxy materials their proposals for bylaw amendments regarding the procedures for nominating candidates to the board of directors; and (2) Release No. 34-56161 which seeks to clarify the meaning of the exclusion for shareholder proposals related to the election of directors contained in Rule 14a-8(i)(8).

As Comptroller of the City of New York, I am a trustee of four of the City's five pension funds and the investment adviser to all five funds. Collectively, the funds hold approximately $111 billion in assets, with significant investments in the securities of publicly traded U.S. companies. As responsible shareowners, the funds have a long history of active and effective advocacy of corporate governance and corporate social responsibility reforms primarily through the shareholder proposal process under Rule 14a-8. As fiduciaries, we firmly believe that active engagement with companies in which our funds are invested is an important part of our duty to protect the retirement benefits of fund members, who are current and retired police officers, firefighters, teachers and civil service employees of the New York City.

My fellow trustees and I strongly advocate that shareholders be allowed a meaningful process to nominate director candidates in company proxy materials. In this regard, we applaud Chairman Cox for his pronouncements that protecting equity owners' property rights "is the only way to insure that boards of directors remain accountable to the interests of investors," and for recognizing that "the ironclad legal right" shareholders have to choose directors is denied under the current system by not allowing access to the company's proxy materials—a system which "stand[s] the principle of 'fair corporate suffrage' on its head."

Following the AFSCME-AIG decision, and the Chairman's indication that Rule 14a-8(i)(8) would be revisited, our expectation was high that the SEC would at last propose a reasonable, meaningful proxy access rule that would strengthen shareholder democracy and director accountability. Sadly, to our dismay, the SEC has failed to deliver. We are disappointed that the SEC has proposed two conflicting rules—one which, among its other provisions, affirms the SEC's misguided interpretation that shareholder proposals relating to procedure(s) for the nomination or election of directors are precluded under Rule 14a-8(i)(8); and the other which proposes to amend Rule 14a-8 by allowing shareholder proposals for bylaw amendments regarding the procedures for nominating directors to be included in company proxy materials only if specific impractical and onerous eligibility criteria are met.

In addition, we are also deeply concerned that the SEC has posed unwarranted questions about the broader structure of Rule 14a-8, with implications that the SEC is considering drastic curtailment of the ability of shareholders to file non-binding proposals—a proven effective process for advancing important corporate governance and corporate social responsibility reforms. Regrettably, for these reasons, we strongly oppose the Commission's adoption of the proposed rules as currently drafted.

Release No. 34-56161, in which the SEC seeks to clarify its interpretation of Rule 14a-8(i) (8) by including, among other stipulations, the nomination and procedure for nomination of directors in the exclusion rule, and refocusing the definition of "related to an election of directors," in effect overturns the Second Circuit's decision in AFSCME Vs AIG, and effectively denies shareholders any means of nominating directors through the company's proxy materials. The SEC's defiance of the Second Circuit's decision is clearly inconsistent with the view articulated by Chairman Cox that shareholders' "ironclad legal right" to choose directors is denied by not allowing access to the company's proxy materials. Indeed, the adoption of this proposal would be a significant setback for shareholder in this regard.

With respect to Release No. 34-56160, which proposes amendments that would allow shareholders to include in company proxy materials their proposals for bylaw

amendments regarding the procedures for nominating candidates to the board of directors, the eligibility criterion of continuous ownership of more than 5% of the company's shares entitled to be voted on the proposal would render most institutional investors ineligible, including the New York City pension funds. According to research conducted by the Council of Institutional Investors, the five percent ownership requirement would most likely be unattainable even if the ten largest public funds were to aggregate their holdings of a single public company's securities.
Furthermore, the provision requiring disclosure of any meetings or contacts, including direct or indirect communication by the shareholder proponent with the management or directors of the company that occurred during the 12-month period prior to the formation of any plans or proposals, or during the pendency of any proposal, is impractical and overly burdensome. If this provision were unfortunately adopted, it would have a chilling effect on constructive dialogue and engagement between the board and management of companies and their shareholders.

Like many institutional investors, we were optimistic that the SEC in its reconsideration of the proxy access rule would view the Second Circuit's decision as a starting point and propose new rules to strengthen shareholder rights, advance corporate governance, and improve director accountability. Instead, the SEC has proposed two starkly opposing rules that have sparked widespread investor disillusionment and mistrust, with more potential for regress rather than progress.

In addition, we are deeply concerned that the SEC has seen it fit to put forth unwarranted, contentious, open-ended questions about non-binding shareholder proposals. We would strongly oppose any rule that would give companies the ability to "opt-out" of the shareholder proposal process under Rule 14a-8 entirely, either by a vote of the shareholders or, if empowered under state law, by a simple vote of the board of directors. We would also strongly oppose any rule that would give companies the ability to avoid receiving shareholder proposals by replacing the process with electronic forums or chat rooms. We would also oppose any rule that would increase the share ownership threshold necessary to file a shareholders proposal, and the thresholds for resubmitting proposals.

Non-binding proposals, though advisory, have resulted in the adoptions of fundamental corporate governance and corporate social responsibility reforms at numerous corporations. For example, our pension funds raised the issue of sexual discrimination by filing its first proposal on the topic in 1991, when very few Fortune 500 companies had policies. Now over 90 percent of these companies have such policies in place, giving the companies access to a wider pool of talent. Another example is that of the shareholder proposal to repeal the classified structure of corporate board of directors. Over the past decade, this proposal has increasingly garnered large shareholder votes, and in recent

years, generally majority votes. As a result, a majority of S&P 500 companies do not have staggered boards today.

Non-binding proposals work, and are cost effective in the long-run by instigating change before serious problems arise. They have effectively opened the doors to productive dialogue and engagement between shareowners and corporate management and boards. We strongly urge that the rules governing the non-binding shareholder proposal not be tampered with.

Protecting and strengthening rather than undermining and weakening the shareholder proposal process will help to make U.S. companies more competitive in global capital markets by increasing their competitiveness in corporate and social governance vis-à-vis foreign companies. Meaningful proxy access would give qualified investors the opportunity to nominate agents who will better serve the interests of the shareholders when the interests of rogue directors conflict with their fiduciary obligations to the shareholders. Non-binding shareholder proposals have been effective in bringing about important corporate governance and corporate social responsibility reforms.

The SEC must be steadfast in upholding its historical purpose as envisioned by Congress at its creation in 1934—to enforce the newly-passed securities laws, to promote stability in the markets and, most importantly, to protect investors. Unfortunately, by issuing proposed rules that would endanger rather than protect investors, the SEC is now perceived by many institutional investors as an adversary.

We strongly urge the Commission not to adopt either proposal as currently drafted. If we can be of further assistance please do not hesitate to contact Kenneth B. Sylvester, Assistant Comptroller for Pension Policy, New York City Comptroller's Office, at (212) 669-2013 or ksylves@comptroller.nyc.gov.

I thank the Commission for the opportunity to present our views on the proposed rules.

Very truly yours,

William C. Thompson, Jr.