John C. Wilcox
Sr. Vice President, Head of Corporate Governance
212-916-5404 212-916-6383 (fax)
jwilcox@tiaa-cref.org

Hye-Won Choi
Vice President and
Associate General Counsel,
Corporate Governance
212-916-5647 212-916-6383 (fax)
hchoi@tiaa-cref.org

September 20, 2007

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

Via email at rule-comments@sec.gov and UPS

Re. File No. S7-16-07
Re. File No. S7-17-07

Dear Ms. Morris:

We are writing on behalf of the Teachers Insurance and Annuity Association of America ("TIAA") and College Retirement Equities Fund ("CREF") (collectively,"TIAA-CREF") in response to the Commission's proposals to amend its rules under the Securities Exchange Act of 1934 concerning shareholder proposals and to clarify the meaning of its exclusion under Rule 14a-8(i)(8)[1] with respect to director elections (the "Proposals").

TIAA-CREF is a national financial services organization with more than $400 billion in combined assets under management. We serve approximately 3.5 million participants as the leading provider of retirement savings products and services for the nation's academic, research, medical and cultural communities. CREF, one of the world's largest institutional investors, holds shares in more than 6,000 publicly traded companies, both domestic and foreign.

We would like to express our appreciation for the work of the Commission and the staff in preparing the Proposals. The role of Rule 14a-8, the integrity of the director nomination process and the regulation of election contests are issues of vital importance to the investing public. We welcome the opportunity to provide our comments, which we hope will be useful to the Commission.

Summary of Recommendations

TIAA-CREF supports the Commission's efforts to ". . . facilitate shareholders' exercise of their state law rights to propose bylaw amendments concerning shareholder nominations of directors .

[1] 17 CFR 240.14a-8.

. . . [and] to make clear that *director nominations* made pursuant to any such bylaw provisions would be subject to the disclosure requirements currently applicable to proxy contests"[2] (italics added). We agree that it is important ". . . to align the Commission's shareholder proposal rule more closely with the underlying state law rights of shareholders."[3] We also support the Commission's goals of ". . . vindicating shareholders' state law rights to nominate directors, on the one hand, and ensuring full disclosure *in election contests*, on the other hand . . . ."[4] (italics added). However, we do not support the Commission's proposed interpretation of Rule 14a-8(i)(8) in Release No. 34-56161.

While we are supportive of the Commission's goals, we are concerned that the regulatory approach taken in the Proposals is unnecessarily complex and in some aspects poorly aligned with shareholder interests. We believe the Proposals, if adopted, would increase uncertainty about the exercise of shareholder rights under Rule 14a-8 and would create obstacles to communication and engagement between companies and shareholders with little, if any, additional protection for either party. To avoid these consequences, we recommend that the Commission should not adopt its proposed interpretation of Rule 14a-8(i)(8)[5] and that it should consider amending the Proposals to establish a simplified regulatory scheme along the following lines:

1. The Commission should affirm its 1976 interpretation of Rule 14a-8(i)(8), thereby applying the election exclusion only to ". . . shareholder proposals that relate to a particular election and not to proposals that . . . would establish the procedural rules governing elections generally."[6] This approach would affirm the primacy of state law in regulating the form, content and impact of shareholder proposals that seek to establish procedures for the nomination of directors and would avoid unnecessarily complicating the process.
2. The Commission's filing and disclosure requirements with respect to shareholder proposals should be based on the criteria set forth in Rule 14a-2(b), which exempts "disinterested persons" who are "not seeking proxy voting authority" and who are "disinterested in the subject matter of a vote."[7] This exemption should be available to proponents of director nomination proposals who are not nominating a candidate for the board and are not seeking proxy voting authority with respect to the current meeting.
3. The Commission should develop more detailed regulations to govern the conduct of elections where shareholder-nominated candidates are included on the company proxy.[8] The Commission should apply the Rule 14a-2(b) "disinterested person" standard to determine the applicability of Rule 14a-12(c)[9] filing and disclosure requirements to these campaigns.
4. The Commission should reconsider adopting an "Override Mechanism" for Rule 14a-8, as recommended in the proposed Amendments to Rules on Shareholder Proposals in 1997 that were not adopted.[10] This approach would permit shareholders or groups representing 3% or more of a company's outstanding shares to override a decision by the

---

[2] Exchange Act Release 34-56160 (Jul. 27, 2007) at II (p15).
[3] Exchange Act Release 34-56160 (Jul. 27, 2007) at II (p15).
[4] Exchange Act Release 34-56160 (Jul. 27, 2007) at II.A.1 (p17).
[5] Exchange Act Release No. 34-56161 (July 17, 2007).
[6] *American Federation of State, County and Municipal Employees, Employees Pension Plan v. American International Group, Inc.,* 462 F.3d 121 (2d Cir. 2006) at p. 14 (AFSCME v AIG).
[7] 17 CFR 240.14a-2.
[8] The Commission's analysis of short-slate solicitations and its proposed design for a "universal ballot" in connection with its adoption of the Bona Fide Nominee Rule in 1992 could be applied to elections of shareholder-nominated candidates pursuant to bylaw amendments. See Exchange Act Release 34-31326 (Oct. 16, 1992) at II. I (p. 17-19) [57 FR 48276].
[9] 17 CFR 240.14a-12.
[10] Exchange Act Release 34-31326 (Oct. 16, 1992) Supplementary Information at 1.

Commission staff to exclude a shareholder proposal under Rule 14a-8(i)(5) (Relevance) and (i)(7) (Management Functions).

5. The Commission should not adopt any additional rules or regulations relating to director nomination proposals by shareholders under Rule 14a-8 or any other rule that would effectively create new limitations on shareholders' statutory rights.

Background

For more than 30 years TIAA-CREF has been a leading advocate for shareholder rights and a proponent of best practices in corporate governance. The newly revised *TIAA-CREF Policy Statement on Corporate Governance*, published in March 2007 ("Policy Statement"),[11] which governs our voting policies and engagement program, is based on our trustees' conviction that shareholders have a duty to monitor the policies and performance of portfolio companies and to hold corporate directors accountable for the fulfillment of their duties of care and loyalty. As explained in our Policy Statement, "We believe that sound governance practices and responsible corporate behavior contribute significantly to the long-term performance of public companies. Accordingly, our mission and fiduciary duty require us to monitor and engage with portfolio companies and to promote better corporate governance and social responsibility."[12]

At the same time, we recognize that our monitoring and engagement activities should not impede directors' independent exercise of their business judgment or interfere with a company's strategic business decisions. TIAA-CREF's engagement activities have been noteworthy for their case-by-case, constructive approach, low public profile and record of success with minimum confrontation. The validity and importance of this type of constructive engagement and direct dialogue with companies were recognized in 1992 when the Commission amended Rule 14a-2(b) to eliminate certain impediments to communication among shareholders and issuers.

The role and importance of Rule 14a-8

TIAA-CREF's engagement campaigns often rely on the submission of Rule 14a-8 proposals. We believe that shareholder proposals relating to high-profile issues, such as executive compensation, are one of the most effective means to facilitate discussion with targeted companies and to raise issues for a vote of shareholders. In recent years we have submitted proposals on a variety of governance issues such as board independence, confidential voting, board diversity, annual director elections, rescission of poison pills, shareholder approval of stock options, expensing options, elimination of evergreen provisions, auditor independence and majority voting in director elections. In addition, we have voted in favor of many shareholder proposals sponsored by other investors on issues such as corporate social responsibility, environmental practices, human rights and other governance matters. We often accompany such votes with letters to companies explaining our views and requesting further dialogue.

The distinction between binding and non-binding resolutions is not a factor in our engagement strategy. Proposals submitted by TIAA-CREF are precatory, even in cases where we are seeking to amend a company's bylaws. In our view, the purpose of Rule 14a-8 is not to force change on a company, but to get the attention of its board and senior management, promote dialogue and, when appropriate, conduct a shareholder referendum on issues of concern. Our statistics show that in approximately half the cases where we have submitted Rule 14a-8 proposals, discussion with management and boards has led to changes in a target company's policies or behavior, enabling us to withdraw the proposal before a vote is taken.

Although critics often characterize Rule 14a-8 as a promotional device for special interests, this type of activity has been eclipsed by the far more substantive role of shareholder proposals in

[11] http://www.tiaa-cref.org/pubs/pdf/governance_policy.pdf

[12] TIAA-CREF Policy Statement on Corporate Governance, p. 1 (available at www.tiaa-cref.org).

defining governance issues, protecting shareholder rights, promoting best practices and increasing the accountability of corporate boards and managers. In addition to functioning as an accountability mechanism, shareholder proposals have also been instrumental in the development of private, market-based solutions in lieu of additional regulation. Majority voting in director elections and advisory votes on executive compensation are two such issues where Rule 14a-8 has played an important role in promoting best practices without the imposition of new rules. Specifically, in the majority voting context, changes in the manner in which directors are elected have been implemented at a number of companies through the shareholder proposal process during the past two years.

Rule 14a-8 proposals offer significant advantages over other forms of engagement. These advantages include: low cost (borne by the company and thus collectively by all shareholders), efficiency (well-established guidelines and procedures administered by the Commission staff), flexibility (suitable for a wide range of policy, accountability and governance goals), certainty (clear legal guidelines, procedures and timing), fairness (a democratic form of referendum inclusive of all shareholders), practicality (greater speed, nuance and lower cost than litigation or regulation) and effectiveness (measurable results at specific companies).

In TIAA-CREF's November 10, 2006 letter to SEC Chairman Cox commenting on AFSCME v. AIG, we made the following statement in support of our recommendation that the Commission should maintain an open and inclusive process for the submission of shareholder proposals on director nominations:

"We believe shareholder proposals are an appropriate method for dealing with complex issues such as access. Proposals draw upon the views of different proponents, allowing for a broad range of ideas and experimentation. They can be tailored to the specific problems of individual companies, avoiding the one-size-fits-all approach required in rulemaking or legislation. They help assemble the collective thinking of shareholders and allow time for concepts to be reviewed and tested. Shareholder proposals are a time-honored feature of the American tradition of corporate democracy, reflecting an enabling approach and a preference for consensus-building and market solutions."

Shareholder proposals are an essential tool to protect shareholders rights, establish governance best practices, ensure management accountability and protect the health of the financial markets. Indeed, the right of shareholders of U.S. companies to submit proposals under Rule 14a-8 is the envy of investors in companies based outside the U.S., where such a right often does not exist or may be limited by burdensome restrictions and regulations.

The Proposals might weaken or undermine Rule 14a-8

Given the importance of Rule 14a-8, we are concerned that the Proposals would introduce obstacles to the shareholder proposal process, increasing its complexity and cost, reducing its usefulness and weakening the ability of shareholders to communicate with each other and engage with issuers constructively on matters of common concern. We are also concerned that the Proposals would effectively rescind some of the reforms adopted by the Commission in 1992 that have been essential to the development of corporate governance best practices and on which we and other shareholders have relied for 15 years.

The goal of the 1992 amendments to the proxy rules was to "eliminate unnecessary regulatory obstacles to the exchange of views and opinions by shareholders and others concerning management performance and initiatives presented for a vote of shareholders."[13] By contrast, the current Proposals seem to reflect a view that regulation should play a larger role in shareholder communications, which is contrary to the longstanding trend.

[13] Exchange Act Release 34-31326 (Oct. 16, 1992), Supplementary Information at 1.

We do not believe that a shareholder proposal seeking to establish nomination procedures is qualitatively different from other Rule 14a-8 proposals submitted in furtherance of basic shareholder rights. Nor do we believe that the proponent of a director nomination proposal, whether binding or non-binding, should be treated differently from other Rule 14a-8 proponents. In fact, the Commission has not made such distinctions in the past with respect to other 14a-8 proposals (often in the form of bylaw amendments) that relate to the director election process. Such proposals have included declassification of boards, annual election of directors and majority voting in director elections. On this basis we disagree with the interpretive statement that is at the core of the Proposals:

"For purposes of Rule 14a-8, the staff has expressed the position that a proposal may result in a contested election if it is a means either to campaign for or against a director nominee or to require a company to include shareholder-nominated candidates in the company's proxy materials." [14]

In our view, this interpretation involves a leap in logic that conflates two very different activities – (1) submitting a shareholder proposal and (2) waging an election contest. We do not agree that sponsorship of a shareholder proposal to establish a nomination right is equivalent to the future exercise of that right. We do not agree that a proposal to establish a nomination process is de facto an election contest. It is likely that many proponents who submit shareholder resolutions seeking to establish nomination rights and procedures will not have a present intention to nominate a candidate or wage an election contest. Their goal may be simply to create an accountability mechanism that serves as a warning to companies and establishes a process to be implemented only if future conditions warrant action.

We are not aware of any evidence indicating that when the 1976 interpretation of Rule 14a-8(i)(8) was in force there was circumvention of proxy contest rules or other types of abuse or overreaching that seem now to be of concern to the Commission. The rules governing shareholder proposals and election contests have always been separate. Differences in the regulation of shareholder proposals and election contests are appropriate and this arrangement should not be affected by the possibility that companies might adopt new procedures for director nomination.

The potentially serious and far-reaching implications of the Proposals' interpretative position are spelled out in the following statement:

"Specifically, we are proposing that any shareholder (or group of shareholders) that forms any plans or proposals regarding an amendment to the company's bylaws concerning shareholder director nominations, file or amend Schedule 13G . . . ."[15]

The accompanying footnote, although not clearly articulated, appears to extend the staff's interpretation beyond director nomination proposals, to include any shareholder proposal in the form of a bylaw amendment relating to the election process:

"In this regard, the formation of any plans or proposals regarding an amendment to the company's bylaws would include the submission of a proposal to amend the company's bylaws, and discussions in which the shareholder indicated to management an intent to submit such a proposal or indicated an intent to refrain from submitting such a proposal conditioned on the taking or not taking of an action by the company . . . ." [16]

We believe the Proposals would reverse the regulatory presumption, in effect for the past 15 years, that shareholders and other persons are deemed to be "disinterested" unless they are

---

[14] Exchange Act Release 34-56161 (Jul. 27, 2007) at II.A (p9).
[15] Exchange Act Release 34-56160 (Jul. 27, 2007) at II.A3.a (p26).
[16] Exchange Act Release 34-56160 (Jul. 27, 2007) at II.A3.a #43 (p26, footnote 43).

"seeking proxy authority or have a substantial interest in the subject matter of the communication beyond the interest of such person as a shareholder."[17] Thus the Proposals would create further confusion rather than clarifying the current regulations.

Rather than conflating shareholder proposals with election contests, a more practical and less disruptive approach would be for the Commission to simply turn to the important distinction made in Rule 14a-2(b) between persons "seeking proxy voting authority" and those "disinterested" persons who are not.[18] This approach would confirm that the proponent of a director nomination bylaw amendment who is not also nominating a candidate for director or seeking proxy voting authority would be deemed "disinterested" and not subject to additional disclosure or filing requirements.

In the 1992 release the Commission itself elaborated on this distinction in the context of Rule 14a-8:

"A person conducting a solicitation in connection with a Rule 14a-8 shareholder proposal will not be deemed to have a substantial interest in the solicitation solely on the basis of its sponsorship of the proposal. Therefore, any such person may rely on the exemption provided that the person does not seek proxy voting authority and is not otherwise ineligible."[19]

The Commission's 1992 adopting release also warned against the problems that might arise if regulation failed to respect these boundaries:

"A regulatory scheme that inserted the Commission staff and corporate management into every exchange and conversation among shareholders, their advisors and other parties on matters subject to a vote certainly would raise serious questions under the free speech clause of the First Amendment, particularly where no proxy authority is being solicited by such persons. This is especially true where such intrusion is not necessary to achieve the goals of the federal securities laws.

The purposes of the proxy rules themselves are better served by promoting free discussion, debate and learning among shareholders and interested persons, than by placing restraints on that process . . . ."[20]

We support the views expressed by the Commission in 1992 and we believe this approach has been instrumental in the protection of shareholder rights for the past 15 years. We are concerned that the Proposals in their current form would create uncertainty about the conduct of communications among shareholders and issuers and, specifically, about the type of private engagement campaigns conducted by responsible, long-term investors such as TIAA-CREF. For example, we are concerned that if the proposed rules had been in existence last year, TIAA-CREF might have been required to file and amend its Schedule 13G, providing detailed information pursuant to new items 8A, 8B and 8C in connection with its engagement campaign for bylaw amendments seeking the adoption of majority voting in director elections. Aside from the added cost, legal complexity and procedural delays, we are concerned that these detailed and burdensome requirements would fundamentally alter the character of TIAA-CREF engagement campaigns by publicizing the names of targeted companies and the details of our private discussions with managers and boards, with little or no benefit from such disclosure. Such requirements would be fundamentally at odds with TIAA-CREF's preference for low-profile, non-confrontational engagement based on private discussion and negotiation. While our policies on governance are publicly disclosed and explained in our Policy Statement, we believe that private dialogue with individual companies is the most effective means to promote these policies.

---

[17] Exchange Act Release 34-31326 (Oct. 16, 1992) at I (p4).
[18] Exchange Act Release 34-31326 (Oct. 16, 1992) at I (p4).
[19] Exchange Act Release 34-31326 (Oct. 16, 1992) at II.A.2 (p9).
[20] Exchange Act Release 34-31326 (Oct. 16, 1992) at I (p5).

Further, we believe that private dialogue is preferred by companies as well. We question whether shareholders would find the proposed disclosures relevant or useful to their voting decisions on any Rule 14a-8 proposal that does not involve an election contest or change of control.

We are also concerned that despite the assurance that ". . . proposing a bylaw amendment pursuant to Rule 14a-8(i)(8) would not on its own eliminate the ability to file a Schedule 13G,"[21] the Proposals would create uncertainty for institutional proponents because the Commission has not taken action to create a specific safe harbor or narrow the definition of control governing determinations with respect to Rule 13D.

At the same time, the Proposals' new filing and disclosure requirements would not effectively discourage the activity of aggressive, short-term activists for whom regulatory disclosures and the accompanying publicity can be useful weapons in campaigns to destabilize targeted companies.

Recommendations and conclusion

We share the Commission's goal of "vindicating shareholders' state law rights to nominate directors . . . and ensuring full disclosure in election contests. . . . "[22] However, we believe these objectives can be more easily achieved by a direct approach that relies on the existing proxy rules and avoids new regulation.

We urge the Commission to: (1) permit director nomination proposals under Rule 14a-8; (2) defer to state law governing the form and content of such proposals; (3) avoid additional amendments to Rule 14a-8; (4) continue to distinguish election contests from shareholder proposals and regulate them separately; (5) affirm that the Rule 14a-2(b) definition of "disinterested person" governs filing and disclosure requirements with respect to Rule 14a-8; and (6) develop clear rules governing the conduct of future election campaigns for shareholder-nominated candidates (see Note 8, above).

The advantages to this approach would be substantial: It would avoid the "distortion of the purposes of the proxy rules"[23] that the Commission worked so carefully to eliminate in 1992. It would clarify and strengthen the role of Rule 14a-2(b) in determining the conditions that trigger disclosure requirements under Rule 12(c). It would reduce complexity and avoid uncertainty in the application and interpretation of Rule 14a-8. It would comply with the decision of the Court of Appeals in AFSCME v. AIG, thereby avoiding the need for further determination of whether the Proposals meet the court's demand for "sufficient reasons" and a "reasoned analysis"[24] in the Commission's interpretation of Rule 14a-8(i)(8). It would affirm the primacy of state law in regulating the form, content and impact of shareholder proposals that seek to establish procedures for the nomination of directors. It would permit the Commission to avoid the task of creating regulatory distinctions between binding and non-binding proposals. It would fulfill Commission's goal of providing "meaningful disclosure to investors in election contests."[25]

In recognition of the need to make Rule 14a-8 less burdensome, time-consuming and costly for shareholders, registrants and the Commission staff, we also make the following recommendation:

The Commission should resurrect its 1997 proposal to "revise rule 14a-8 to permit a shareholder proponent to override the exclusions under [sections (i)(5) and (i)(7)] if he or she demonstrates that at least 3% of the company's outstanding voting shares support the submission of the proposal for a shareholder vote."[26] As stated in the 1997 release, "The 'override' mechanism

---

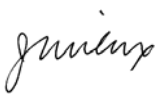
[21] Exchange Act Release 34-56160 (July 27, 2007) at II A. 2, note 39 (p. 19).
[22] Exchange Act Release 34-56160 (Jul. 27, 2007) at II.A.1 (p17).
[23] Exchange Act Release 34-31326 (Oct. 16, 1992) at I (p4).
[24] AFSCME v. AIG at p. 3, p. 15.
[25] Exchange Act Release 34-56160 (Jul. 27, 2007) at II.A.1 (p17).
[26] Exchange Act Release 34-39093 (Sep. 19, 1997) at III.F (p16).

would broaden the spectrum of proposals that may be included in companies' proxy materials where a certain percentage of the shareholder body believes that all shareholders should have an opportunity to express a view on the proposal. The proposed mechanism would accordingly provide shareholders an opportunity to decide for themselves which proposals are sufficiently important and relevant to all shareholders – and, therefore, to the company – to merit space in the company's proxy materials."[27] The Proposals' suggestions relating to electronic communications could provide an appropriate method for shareholders to solicit and verify the required 3% support. In this connection the Commission may also wish to reconsider its related 1997 proposal to establish new resubmission thresholds under Rule 14a-8.[28] While we express no view on the appropriate level of resubmission thresholds, we understand the Commission's rationale in linking the override privilege to the resubmission requirements.[29]

In conclusion, we believe that with respect to regulation of shareholder proposals and the administration of Rule 14a-8, the observation made by the Commission a decade ago still resonates today: "[S]hareholders may be the best judge of which . . . proposals deserve space on the company's proxy card."[30]

Respectfully submitted,

John C. Wilcox
Senior Vice President,
Head of Corporate Governance



Hye-Won Choi
Vice President and Associate General Counsel,
Corporate Governance

Enc. -- Appendix: Responses to Selected Questions from the Proposals

[27] Exchange Act Release 34-39093 (Sep. 19, 1997) at III.F (p16).
[28] Exchange Act Release 34-39093 (Sep. 19, 1997) at III.E (p15).
[29] See our response in the Appendix at page 11 below.
[30] Exchange Act Release 34-39093 (Sep. 19, 1997) at III.E (p15).

APPENDIX

Responses to Selected Questions from SEC Releases 34-56160 (Release I) and 34-56161 (Release II)

Release I, Pages 21-24 and 34-36:

Q: "As proposed, a bylaw proposal may be submitted by a shareholder (or group of shareholders) that is eligible to and has filed a Schedule 13G that includes specified public disclosures regarding its background and its interactions with the company, that has continuously held more than 5% of the company's securities for at least one year, and that otherwise satisfies the procedural requirements of Rule 14a-8 (e.g., holding the securities through the date of the annual meeting). Are these disclosure requirements for who may submit a proposal, including eligibility to file on Schedule 13G, appropriate? If not, what eligibility requirements and what disclosure regime would be appropriate?"

A: For the reasons discussed in our letter, we do not believe these disclosure requirements are appropriate. We believe that proponents of director nomination proposals under Rule 14a-8 should be subject to no additional filing or disclosure requirements provided that they are "disinterested" under Rule 14a-2(b). Given our position that no additional disclosure is needed, we do not address the remaining questions in this section except the following.

Release I, Page 34:

Q: "The proposed disclosure standards relate to the *qualifications of the shareholder proponent*, any relationships between the shareholder proponent and the company, and any efforts to influence the decisions of the company's management or board of directors… Is the proposed level of required disclosure appropriate?"

Q: "Are any of the proposed disclosure requirements unnecessary to shareholders' ability to make an informed voting decision? If so, which specific requirements are unnecessary?"

A: We question the assumption that shareholders need or want additional disclosure about the qualifications of proponents in order to make informed voting decisions on shareholder proposals. This assumption is contrary to TIAA-CREF's policies that govern voting on the merits of each proposal, not on the character or intentions of the proponent. We do not believe that such information would be useful or necessary to the making of an informed voting decision on Rule 14a-8 proposals.

Another cause of concern to us is the uncertainty created by the Proposals regarding binding and non-binding resolutions. Although the Proposals are unclear, it appears that the Staff assumes that "proposals for bylaw amendments regarding the procedures for nominating candidates to the board of directors" should always be in binding form. This is not necessarily the case. Shareholders often submit bylaw amendment resolutions in non-binding form. TIAA-CREF has used a non-binding bylaw amendment as the form of its resolutions seeking the adoption of majority voting in director elections. The proposals were structured as a request for the board to adopt a bylaw amendment. A similar approach has been used in seeking to establish a nominating procedure at companies such as United Health Group where the resolution consisted of a non-binding request for the board to amend the bylaws.

We are also concerned that the Proposals appear to close the door on any non-binding form of director nomination proposals. It is unclear under the Commission's analysis whether the non-binding resolution of the type submitted at United Health would continue to be permissible.

Release I, Pages 40-42:

Q: "As proposed, a nominating shareholder would be required to provide to the company, for inclusion in the company's proxy materials, disclosure responsive to Item 8(A), Item 8(B) and Item 8(C) of Schedule 13G, as well as Item 4(b), Item 5(b), Item 7 and Item 22(b) of Schedule 14A, as applicable. Is this the appropriate type and amount of disclosure for a nomination under a shareholder nomination procedure? If not, what disclosure requirement would be appropriate? Is the timing requirement for providing this disclosure appropriate? If not, when should such disclosure be provided?"

A: As discussed in our letter, we agree that it would be appropriate for the Commission to adopt more detailed rules and regulations governing the conduct of election campaigns which include shareholder-nominated candidates. We recommend that the Commission use the existing standards contained in Rule14a-2(b) to determine when additional filing and disclosure requirements should be triggered. We also believe that the requirements contained in Rule 14a-12(c) should be applied in a uniform manner to both management and shareholders in the conduct of contested elections. We believe that the additional disclosure requirements set forth on pages 24 through 33 are burdensome and unnecessary and should not be imposed on either nominating shareholders or companies.

Release I, Pages 47-50:

Q: "Our proposals are intended to provide a company or its shareholders with the flexibility under the federal securities laws to establish an electronic shareholder forum that permits interaction among shareholders and between shareholders and the company's management or board of directors, and permits the operator of the electronic shareholder forum to provide for non-binding referenda votes of forum participants. Do our proposals provide flexibility? Are there additional steps that are necessary to assure that the federal securities laws do not hinder the development of these electronic shareholder forums?"

A: We support the Commission's proposal to encourage the development and formation of electronic shareholder forums, which we believe will improve shareholders' ability to communicate with management and other shareholders. We agree that electronic forums could be used to supplement the current Rule 14a-8 process by providing shareholders with a means to determine the level of interest with regard to various governance issues and gauge support for potential proposals and initiatives. Such electronic forums would also be useful to assemble shareholder support for the 3% override mentioned in our letter.

Q: "As proposed, the new rules would allow companies and shareholders to develop electronic shareholder forums as they see fit, as long as the forums are conducted in compliance with Section 14(a) of the Exchange Act, other federal laws, applicable state law, and the company's charter and bylaw provisions. Should we be more prescriptive in our approach, such as by providing direction or guidance relating to whether a forum is available for non-binding referenda, whether access is limited to shareholders, the frequency with which shareholder records are updated for purposes of enabling participation, or whether the forum assures the anonymity of shareholders who access it?"

A: Rather than adopting prescriptive and detailed rules, we suggest that the Commission allow shareholders and companies to develop a market-based approach to the structure and operation of the forums. Investors and companies should determine the most effective way to encourage participation in compliance with state laws and company governing documents.

Q: "As proposed, we make clear that a company or shareholder that establishes, maintains, or operates a forum is not liable for any statements or information provided by another person.

Does the proposed rule adequately address the liability concerns that might face sponsors of and participants in an electronic shareholder forum?"

A: We generally agree with the Commission's proposal to limit liability for statements made by participants in such forums and to exempt such communications from the definition of a "solicitation."

Release I, Pages 50-58:

Q: "…We are requesting comment as to whether the Commission should adopt rules that would enable shareholders, if they choose to do so, to determine the particular approach they wish to follow with regard to non-binding proposals…."

A: We believe that all shareholder resolutions, whether binding or not, should continue to be uniformly regulated under Rule 14a-8. We do not therefore reach the specific question of whether companies should individually establish procedures concerning the submission of non-binding resolutions. However, we are concerned that such an approach could be unnecessarily complex and would not provide a uniform standard governing the submission of resolutions, which we believe is a fundamental shareholder right. As indicated in our letter, TIAA-CREF relies on shareholder resolutions as a primary means to engage with companies to initiate dialogue and ultimately to increase accountability. The lack of a uniform process for shareholder proposals could be subject to abuse at controlled companies where the rights of minority shareholders are most in need of vigorous protection.

Q: "Should the Commission adopt a provision to enable companies to follow an electronic petition model for non-binding shareholder proposals in lieu of Rule 14a-8?"

A: We believe that the Commission should adopt such a provision as a supplemental procedure and not in lieu of Rule 14a-8.

Q: "Are there additional changes to Rule 14a-8 that would improve operation of the rule? If so, what changes would be appropriate and why? Should the Commission alter the resubmission thresholds for proposals that deal with substantially the same subject matter as another proposal that previously has been included in the company's proxy materials?"

A: As suggested in our letter, we believe that Rule 14a-8 that could be improved by the addition of an override mechanism in connection with exclusions under Rule 14a-8(i)(5) and 14a-8(i)(7) relating to "Relevance" and "Management Functions" (ordinary business). As indicated in our letter, we recommend that the Commission consider revisiting its 1997 proposal to permit shareholders representing 3% or more of a company's stock to override a decision by the staff to exclude a proposal under either of these provisions. In connection with this reform, the Commission might decide to consider the establishment of new resubmission thresholds. While we do not have a specific recommendation, we do not agree with the arbitrary increase to 10%, 15%, 20% mentioned in the Proposals. In our view, it would be appropriate for the Commission to conduct a comprehensive study of voting results and to work with the investor and corporate communities to understand the factors relevant to determining appropriate resubmission thresholds. These factors would include: the impact of an override mechanism, as discussed in our letter above; current vote levels for proposals relating to corporate governance, social responsibility, the environment, shareholder and human rights; the historic gestation period for new or innovative proposals to gain traction through the Rule 14a-8 process; an extended time period with a more gradual increase in threshholds over a period longer than three years; the impact of investor forums, web sites, electronic communications and other technological developments on proponents' ability to assemble shareholder support; the role of proxy advisory firms.

Release II, Pages 21-22

Q: “We request and encourage any interested person to submit comments regarding: (i) the proposed amendments that are the subject of this release; (ii) additional or different changes; or (iii) other matters that may have an effect on the proposals contained in this release.”

A: As discussed in our letter, we believe that the Commission should permit the submission of director nomination resolutions under Rule 14a-8(i)(8) and should affirm its 1976 interpretation applying the election exclusion only to shareholder resolutions that relate to a particular election and not to those seeking to establish procedures governing elections. We do not believe that the submission of a director nomination resolution should be regulated as an election contest. A resolution can be formulated as a request for a company to consider adopting procedures governing shareholder nominations or it may be presented as a binding bylaw amendment. In neither case would there be reason for the concern articulated by the Commission as the basis of its action -- “the circumvention of other proxy rules that are carefully crafted to ensure that investors receive adequate disclosure in election contests.” The clear difference between 14a-8 proposals and election contests should be recognized in the Commission’s regulatory scheme.