Social Investment Forum

September 27, 2007

Commissioner Christopher Cox
Chairman – Securities & Exchange Commission,
Nancy Morris
Secretary – Securities & Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Comment on Release No. 34-56160; IC-27913; File No. S7-16-07
and Release No. 34-56161; IC-27914; File No. S7-17-07

Dear Commissioner Cox and Secretary Morris:

The Social Investment Forum (SIF) is submitting comments on the above referenced Releases dealing with the shareholder resolution process and access to the proxy.

The Social Investment Forum is the national membership association dedicated to advancing the concept, practice, and growth of socially and environmentally responsible investing. Our members integrate environmental, social, and governance factors into their investment decisions and the Forum provides programs and resources to advance this work. Our membership includes hundreds of social investment practitioners and institutions including financial professionals, analysts, portfolio managers, mutual fund companies, banks, foundations and pension funds. Our members take their responsibilities as owners of securities seriously including the voting of proxies and engagement with companies.

We write this letter of comment believing that an investor's ability to engage with companies – a top priority of our members – would be severely hampered if certain concepts raised in the SEC releases were to be implemented.

We are pleased to present these comments based on our years of experience as fiduciaries engaged in shareholder advocacy.

We wish to state at the outset that we believe the Commission should delay a final decision on these issues until a full Commission is in place. We are focusing our comments on four areas for which the SEC invited feedback, three of which were

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raised as a series of questions in Release No. 34-56160 File S7-16-07, entitled "Shareholder Proposals." Although it is unclear what the Commission's intentions are with respect to non-binding proposals, we are concerned by the direction of these questions and strongly encourage the Commission to drop these concepts before proceeding to a rulemaking process.

In short, we believe these concepts, if adopted, would be extremely detrimental to long-term shareholder value and would only serve to empower those companies that wish to remain unaccountable to their shareholders and other stakeholders.

1. The Opt-Out Provision
2. The Electronic Forum
3. The Threshold for Resubmission of Non-binding Shareholder Resolutions
4. The Two Proxy Access Proposals for Director Nominations

The Opt-Out Approach

The SEC asks for comments on the right of a company to "opt-out" of the shareholder resolution process, either by obtaining approval from shareholders through a proxy vote, or, if sanctioned under state law, by having a Board vote authorizing the company to opt-out.

The Social Investment Forum believes that an opt-out option would have significant negative consequences. The most unresponsive companies would be more likely to opt-out because resolutions are an important mechanism to strengthen corporate accountability. Companies with relatively poor investor communications would be empowered to isolate themselves further. Imagine a scenario where a Board criticized for poor governance and irresponsible behavior--e.g. backdating of options resulting in legal action against the company--simply decides it doesn't like the criticism and decides to opt-out. A company that had received a number of resolutions garnering strong shareholder votes – the company whose long-term value one would think would best be served by Rule 14a-8 – would be the company most likely to accept the Commission's invitation to opt-out of the process. An important tool of accountability to investors would evaporate overnight. Additionally, the lack of uniform rules that would result from an opt-out option is a complicating factor for both investors and companies.

We also cannot support an opt-out rule implemented through a shareholder vote. Far from an appropriate democratic process, this more accurately reflects the anti-democratic notion of *one share, one vote, one time.* Future shareholders will have no such voice.

This concept is particularly puzzling. The logic for allowing a company to withdraw from the resolution process is not explained and the motives of the Commission in presenting this option are unclear. The concept of allowing a board of directors or a

company's current shareholders to vote to disenfranchise future shareholders would seem to run contrary to the Commission's commitment to universal shareholder suffrage.

We believe that the SEC should actively encourage companies to embrace checks and balances, and strong accountability mechanisms, rather than encourage them to take advantage of State laws that may enable them to disenfranchise and ignore their shareholders. We urge the SEC to drop the opt-out concept.

Comments on Electronic Forum Option

The Electronic Petition Model or "Chat Room"

The release asks, "Should the Commission adopt a provision to enable companies to follow an electronic petition model for non-binding shareholder proposals in lieu of 14a-8?" This question builds on the SEC Roundtable discussion of "electronic chat rooms" and suggests that such a forum could substitute for the right to file shareholder resolutions.

We are strongly opposed to this concept. An electronic petition or online Forum cannot substitute for the current shareholder resolution process.

We wish to emphasize that we strongly support new forms of electronic communication between investors and the Board and management. For example, a number of companies have set up email boxes for Directors in their capacity as Chair of the Governance Committee or Compensation Committee and correspondence is encouraged. We are pleased the SEC is open to examining new electronic communication approaches.

We also support creative new concepts of future forums for exchange of views or even informal polls of those investors who are signed into the forum.

The troubling part of the SEC proposal is the concept of allowing for the elimination of the shareholder resolution process and the substitution of the electronic Forum or "chat room."

Again, the Commission has not articulated any clear rationale for this idea, which would replace an orderly and successful accountability mechanism with an untested forum that is likely to be ignored by serious investors at best, and open to a wide range of fraudulent activity at worst. A wide range of credible concerns were raised during the Commission's public roundtable discussions on the proxy process in May. The concept is fraught with logistical difficulties and unanswered questions.

Most importantly for this community is the fact that this concept ignores the ongoing success of the shareholder resolution process and attempts to create an untested

option as a substitute. Presently, shareholder resolutions assure that management and the Board focus on the issue at hand since it is included in the proxy and debated at the annual stockholder meeting. Additionally, each and every investor receiving a proxy has the opportunity to consider the proxy item and cast a vote. SIF believes that to substitute a chat room or other forms of electronic petition for the current proxy process would eliminate a valuable fiduciary tool.

The current process guarantees that all shareholders can consider the issue, whereas the chat room or Forum would create an environment with a daily exchange of information that no shareholder could adequately monitor. Assuming this forum hosted valuable discussions – a debatable assumption considering the current electronic forums that exist – technologically savvy investors, or those with a large staff to monitor these exchanges, would be placed at an advantage over other shareholders.

We believe that responsible fiduciaries would be unable or unlikely to monitor a "chat room" on a daily basis in order to weed through the variety of random shareholder concerns raised to find the information that is material to their decisions. The rise in shareholder votes on advisory shareholder resolutions over the past few years attests to the fact that these fiduciaries are taking these issues seriously, and are finding value in the proxy statement as currently utilized and regulated.

In addition, there is no assurance that a significant percentage of investors will utilize the Forum, thus any "poll" would only be of those investors who signed up giving no reasonable assessment of the range of investor views on a topic, and no clearly established universal method for counting the votes. In fact, it is unclear whether companies would even be required to disclose the results of these periodic 'straw polls.'

It is also unclear how investors who recently sold their shares or added to their holdings would be treated. In the proxy process there is a date of record when the clock stops and investor shares are counted. Will there need to be a series of "dates of record" with proof of ownership provided for each poll that is taken on the Forum? Will an unregulated forum simply exacerbate the influence of short-term investors?

Finally, as noted above, there are many investors who may be unable to join the Forum, thus creating two classes of investors, some disenfranchised. We do not believe this is an acceptable signal for the SEC to send.

Chat rooms and electronic forums are welcome approaches for enhancing communication with investors. They are not a substitute for a shareholder's right to file resolutions.

Resubmission Thresholds

The Commission is questioning whether the voting thresholds for resubmitting resolutions should be increased. Presently the resubmission thresholds stand at 3% to re-file resolutions after the first year, 6% after the second year and 10% thereafter. The SEC is testing the concept of increasing the thresholds to 10%, 15% and 20%, respectively.

In responding to this question, it is important to assess the business community's and SEC's need for "relief" from the resolution process, and to evaluate the impact of the suggested change on shareholder proponents.

Impact on Companies

Recent experience shows that a small minority of publicly traded companies receive shareholder resolutions. In 2006 and 2007, there were fewer than 1,200 resolutions filed at less than 1,000 companies. This represents fewer than 20% of companies. Hence, we believe the business community is not burdened significantly by the resolution process. Resolutions overwhelmingly are filed with large cap companies with the greatest resources. Mid cap and small cap companies rarely, if ever, receive resolutions. We have seen no data that supports the argument that corporations are overwhelmed by this process, and we can very clearly document the numerous and substantial long-term benefits to shareholder value that has been created through the non-binding resolution process.

Companies with a number of resolutions, such as Exxon Mobil or Home Depot, seem to have developed an orderly process for addressing them. Moreover, companies with multiple resolutions are frequently embroiled in significant public controversies, thereby reinforcing the resolution process as an important vehicle for shareholders to address their concerns.

In fact, according to publications issued by Institutional Shareholder Services (ISS) and the Interfaith Center on Corporate Responsibility (ICCR) about one-quarter to one-third of resolutions are withdrawn each year. These never appear on proxy statements because mutually acceptable agreements are struck between investor proponents and companies. Hence, by being responsive to investor concerns, companies usually have opportunities to avoid proxy resolutions.

Impact on the SEC

We understand the significance of the SEC's role as arbiter when companies petition for *No Action* letters to omit resolutions from their proxy statements. Fortunately, the number of such requests decreased to 237 in 2007 from 259 in 2006. Also, we believe the SEC workload is mitigated to the extent that many *No Action* requests address pro forma decisions (e.g. late submissions or challenges with respect to proof of ownership), or issues previously raised at other companies.

Nonetheless, we know that *No Action* letters are a seasonal pressure for the SEC. But as investor proponents and companies indicated ten years ago when this question was last debated and comments submitted to the SEC, there is a strong desire and mutual need to have the SEC act as an arbiter of the *No Action* process. It has been the experience of our members that SEC staff has been able to effectively handle numerous no-action requests over the years.

There is no other means to ensure that both proponents and issuers are treated fairly and consistently. We conclude that Rule 14a-8 has evolved into a critically important check on corporate behavior and there may be no practical substitute for a lengthy and somewhat burdensome no-action process.

Impact on Shareholder Proponents

From the viewpoint of proponents, it is clear that a major increase in resubmission thresholds would have a significant chilling effect on a range of resolutions on important topics. Looking back to the 1970s and 1980s, the early days of shareholder advocacy, we saw that new proxy issues often took time to develop traction among large groups of investors. On topics as diverse as apartheid in South Africa, corporate governance reform or climate change, investors needed time to gain knowledge and evaluate a corporation's response in fulfilling their fiduciary duty to vote proxies conscientiously. Raising resubmission thresholds as suggested would stifle this engagement that we believe is in the long term interests of companies and their shareholders.

It would further enhance the current short-term perspective of our capital markets to exclude those issues that have not yet become "material" to a majority of institutional investors. Unfortunately, by the time many of these risks, such as climate change, do garner widespread support, it may be too late to address them. The current vote thresholds are sufficiently low to permit these issues to return year after year and to gradually build support. The current thresholds serve those fiduciaries who wish to take a more prudent approach to risk, preferring to encourage boards to begin to address risks now that are not yet recognized by less forward-looking investors. The SEC should be seeking to enhance these fiduciaries' abilities to fulfill their duties.

Looking exclusively at the subset of resolutions for 2006 that address environmental and social issues, about 14% of the total number of resolutions filed, it seems clear that the suggested new thresholds would dampen improved performance and accountability on emerging shareholder concerns. According to the ISS Social Issues Service in its final report on the 2006 season (*Social Policy Shareholders Resolutions in 2006: Issues, Votes and Views of Institutional Investors*), 198 shareholder proposals came to votes on social and environmental topics at U.S. companies, of which 160 (81%) earned enough support (under the 3-6-10 percent rule) for resubmission. Had the resubmission thresholds been 10-15-20 percent in 2006, only 71 (36%) of resolutions would have earned enough support for

resubmission – a dramatically negative change for shareholder proponents (see table below).

Effect of Resubmission Thresholds on 2006 Resolutions

Effect of Resubmission Thresholds on 2006 Social/Environmental Proposals		
Resubmission Threshold	**Proposed: 10-15-20%**	**Curent: 3-6-10%**
• First Year	53	119
• Second Year	13	29
• Third Year	5	12
Total (as percent of 198 resolutions)	**71 (36%)**	**160 (81%)**
Source: Institutional Shareholder Services		

Consolidated data on all shareholder proposals from 2000-2006 in the next table confirms the substantial impact on investor proponents, albeit less dramatic for resolutions addressing corporate governance topics.

Support for Shareholder Proposals 2000-2006		
Shareholder Proposals	**Social Issues**	**Governance Issues**
• Total Voted on	1168	2551
• With support of at least 10%	350	2041
• With support of at least 15%	180	1797
• With support of at least 20%	138	1655
Note: Support percentage is calculated as percent of shares cast "for" out of shares cast "for" and "against." Source: Institutional Shareholder Services		

SIF is aware that management at some companies may want to limit or eliminate social and environmental resolutions because they are viewed as frivolous or not significant business matters. Yet, increasingly, evidence suggests, and major institutional investors believe, that strong performance on environmental and social concerns such as climate change, water scarcity or global supply change management, among others, is correlated with long term business success. Given their importance, we believe that the relatively small number of shareholder resolutions on environmental and social issues does not present a significant burden to companies or the SEC.

In considering the impact on investors it is important to understand that many proponents view the proxy resolution as a "last resort" attempt at engagement, an avenue that helps ensure concerns are heard by top management and board members. TIAA-CREF, for example, describes this philosophy in its recently updated Governance Policy. If a company repeatedly refuses to respond to correspondence or requests for meetings with its investors, the shareholder resolution often acts as an impetus for improved communications. Adding more

restrictive thresholds on resubmitting resolutions simply makes it more difficult for investors who seek constructive engagement with companies.

In positing this question, it should be noted that the SEC has not made a case for why this change is warranted, what the impact on shareholder proposals would be and how such a change would advance the public interest. The new threshold numbers are presented without any discussion of the criteria used to select them.

Access To The Proxy for Director Nominations

The Release No. 34-56161 presents two opposite positions on the issue of "access" to the proxy to allow investors to utilize the proxy process to nominate Directors for election to the Board.

We support the right of investors to be able to nominate Directors via the proxy process. Thus, we oppose the Securities and Exchange Commission proposal that continues the Commission's traditional position prohibiting this approach.

In light of the recent 2007 ruling in the Second Circuit in the AFSCME case allowing a shareholder proposal to establish a process for shareholder nominated candidates, we believe the SEC should move from its historical position.

There are compelling reasons to allow for "access." For example, where Boards are dysfunctional and investors interests are being harmed, shareholders have a very real stake in creating a healthy and functional Board. The ability to nominate directors is an effective mechanism to do so. We would expect investors to exercise the "access" option very rarely if it is provided and significant voting support will only materialize only in egregious situations.

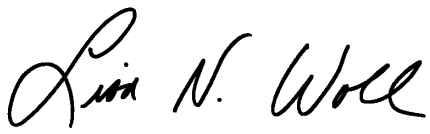
Investors have already indicated strong support for non-binding resolutions calling for shareholder nomination of Directors. Resolutions at Hewlett Packard won 43% of the vote and the resolution at United Health Group won 45%, remarkable showings for a new resolution.

The other proposal dealing with access embraces the concept in theory but sets an unreasonably high 5% filing threshold and burdensome disclosure requirements that make it unworkable in practice. The SEC should not give investors a right, then make it impossible to utilize except in rare circumstances.

Thus we oppose this proposal as formulated.

Finally, in light of Commissioner Campos's departure, we would reiterate that it would be preferable for the Commission to defer action on these two proposals until a full complement of Commissioners is able to study the comments provided by investors.

Sincerely,



Lisa Woll, CEO

Timothy Smith, Board Chair