October 1, 2006 VIA EMAIL: Rule-Comments@SEC.gov

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

Re: File Number S7–16–07 and File Number S7–17–07

Dear Ms. Morris:

This is in response to the Commission's invitation to comment on the above rulemaking proposals with respect to shareowner proposals on director elections.

About Me

I am the publisher of Corporate Governance, a.k.a., CorpGov.net (http://www.corpgov.net), and PERSWatch.net (http://perswatch.net). Both focus on the need for director accountability. CorpGov.net is aimed at helping individual and institutional investors ensure that corporate directors can be held accountable by long-term investors and that corporations tap the sustainable wealth generating capacity of employees, customers and investors. PERSWatch.net is aimed at ensuring fair elections and the highest ethical standards at the California Public Employees Retirement System (CalPERS) to ensure good governance also applies to the nation's largest pension fund. Additionally, I am a consultant on corporate governance and an individual investor in a long list of companies.

Background on Proxy Access Issue

The Commission proposed giving shareowners access to the proxy to nominate directors in 1942 but sloppy language and World War II got in the way. In 1976 the nation was rocked by business scandals (see Corporate Morality -- Whose Business Is It? – Address by Roderick M. Hills, SEC Chairman, April 13, 1976 at http://www.sec.gov/news/speech/1976/041376hills.pdf). In response, the Business Roundtable (BRT) in 1977 recommended "amendments to Rule 14a-8 that would permit shareholders to propose amendments to corporate bylaws, which would provide for shareholder nominations of candidates for election to boards of directors." Their memo noted that such amendments "would do no more than allow the establishment of machinery to enable shareholders to exercise rights acknowledged to exist under state law."

In 1978 SEC staff recommended that if sufficient progress wasn't made by companies in considering shareowner nominations during the 1980 proxy season, the Commission should grant shareowners "access to issuer proxy material for the purpose of making shareholder nominations."

Congress passed the Foreign Corrupt Practices Act and the stock exchanges adopted rules requiring corporate boards to have “independent” audit committees. The SEC passed rules requiring board candidates to provide information in the proxy regarding conflict of interest transactions and required corporations to disclose additional information regarding executive compensation, standing board committees, director attendance and resignations.

Although nothing was done explicitly address access, in 1976 the SEC had affirmed the exclusion in Rule 14a-8(i)(8) applied only to “…shareholder proposals that relate to a particular election and not to proposals that…would establish the procedural rules governing elections generally.” (AFSCME v. AIG at http://www.ca2.uscourts.gov:8080/isysnative/RDpcT3BpbnNcT1BOXDA1LTI4MjVfb3) Numerous proposals on elections were submitted during the following decade and were well received.

Professor Jane W. Barnard documented some them in “Shareholder Access to the Proxy Revisited,” Catholic University Law Review, Volume 40, Fall 1990, Number 1. For example, in 1980 a shareowner of Unicare Services proposed permitting any three shareowners be able to nominate board candidates and have them placed on the proxy. A similar proposal at Mobil allowed a “reasonable number of stockholders” to place candidates on the proxy statement. In 1981 Union Oil was forced to include a proposal permitting 500 or more shareowners to place nominees on the corporate ballot, with no threshold on the number of shares they held individually or collectively. SEC staff rejected management’s argument that rule 14a-8(c)(8) allowed exclusion. They held the proposal did not relate to “the election of directors at a particular meeting, but rather to the procedure to be followed to select nominees in general.”

Interestingly, during this period at least one corporation, Unocal, argued that placing a minimum threshold on access to the company’s proxy would discriminate “in favor of large stockholder and to the detriment of small stockholders,” causing the company to violate the equal treatment principle.

In 1988, CalPERS submitted a shareowner proposal to Texaco providing for the establishment of a Stockholder’s Advisory Committee made up of nine of the company’s largest shareowners. CalPERS saw the Committee as an avenue to influence director nominations but withdrew the proposal when Texaco agreed to nominate a candidate recommended by CalPERS.

After years of allowing shareowner proposals concerning elections, the SEC suddenly issued a series of no-action letters in 1990 ruling that proposals concerning board nominations could be excluded under rule 14a-8(c)(8). Professor Barnard speculates the SEC probably changed its position because proposals being put forth by institutional investors were getting majority votes. In 1990 more shareowner proposals passed than in the proceeding 40 years combined. Proposals to allow shareowner nominees on corporate ballots would soon have real consequences.

9295 Yorkship Court □ Elk Grove, CA 95758
e-mail: jm@corpgov.net □ http://www.corpgov.net

Professor Barnard's insights as to why the SEC changed course carries weight, since she was assisted in her research by Virginia Rosenbaum, then with the Investor Responsibility Research Center, Jamie Heard, then with Analysis Group, Richard Koppes and Kayla Gillan, then with CalPERS, and Nell Minow, then at Institutional Shareholder Services…all familiar to shareowners and the SEC.

On August 1, 2002, the Committee of Concerned Shareholders (represented by Les Greenberg) and I petitioned the SEC to permit corporate shareowners to nominate director-candidates and cause the names of those candidates to appear on the corporate proxy. The $3 trillion Council of Institutional Investors (CII), which primarily represents large pension funds, indicated that our petition "re-energized" the "debate over shareholder access to management proxy cards to nominate directors and raise other issues." (Equal Access - What Is It? at http://www.concernedshareholders.com/CalPERS_EqualAccess.pdf)

The scandals of Enron, WorldCom, Global Crossing and so many others, which triggered my own petition in 2002 and the SEC's subsequent 2003 proposal, might have been averted if shareowners had been able to continue to propose changes to the election process under the SEC's 1976 interpretation. Directors would have been more independent of management and more dependent on shareowners. They would have been more vigilant, even without the reforms of Sarbanes Oxley (http://www.soxlaw.com)

When the Commission took up the proxy access issue in 2003, CII's former executive director, Sarah Teslik, said it was "the biggest thing that has come out of the Commission in my 20-year career." Patrick McGurn, of proxy advisor Institutional Shareholder Services (ISS), said the movement for an open ballot is the "Holy Grail of corporate governance." The shelved measure, even as complex as it was, got more comments, almost all in support, than any rulemaking in SEC history as of the date comments were due. Obviously, the topic holds great potential.

I am delighted the Commission has once again taken up this topic and wish to express my deep appreciation to both the Commission and staff for all the hard work that has obviously gone into both proposals. I fully support the stated intent of the Commission outlined in S7–16–07 to facilitate the corporate proxy process so that it functions, as nearly as possible, as a replacement for an actual, in-person gathering of security holders, thus enabling security holders ‘‘to control the corporation as effectively as they might have by attending a shareholder meeting.’’

No Access

Unfortunately, S7–17–07 runs entirely contrary to this intent. I am unreservedly opposed to this proposal, which would deny shareowners rights they now enjoy under state law. I agree with the comments submitted by J. Robert Brown, Jr. on 9/17/07 (http://www.sec.gov/comments/s7-17-07/s71707-16.pdf)

- The proposed language is imprecise, especially with regard to its applicability to election issues such as majority vote requirements, and will

9295 Yorkship Court □ Elk Grove, CA 95758
e-mail: jm@corpgov.net □ http://www.corpgov.net

result in challenges to an increased number of proposals made by shareowners in subject areas already considered resolved. The language will, therefore, impose a substantial burden on shareowners and SEC staff alike.

- The language of the proposal will result in unintended consequences. The language can be easily circumvented. It will push shareowners to make proposals permissible under Rule 14a-8 that, if adopted, would be more intrusive than the access proposal at issue in this Release and would result in a higher number of election contests. Frustrated investors will turn to binding bylaw resolutions and will seek corporate reimbursement for election contests.
- The affirmative reasons given by the Commission are not adequate to support the proposal. The reasoning at best would support amendments to the proxy rules to ensure adequate disclosure whenever shareowners included a nominee in the company's proxy statement. Moreover, given that some companies will voluntarily include these provisions (two have already done so) or some shareowners will pay the costs to have these provisions adopted, the adoption of this proposal will leave the problem of inadequate disclosure unaddressed.

Reduced Access

With regard to S7–16–07, there is a fundamental flaw in the SEC's approach. In colloquial terms, the proposal "puts the cart before the horse." It appears the SEC assumes that every proponent of an access proposal intends to also nominate candidates. While at least some of the additional disclosures proposed by the SEC may be appropriate when shareowners nominate candidates to appear on the corporate proxy, they are a waste of time and effort when shareowners are simply trying to get a rule at a company to allow such access.

Adopting such resolutions is seen by many shareowners as part of creating a good governance framework, like adopting annual elections and majority vote requirements for directors. The SEC does not require proponents of annual elections or majority vote resolutions to provide extensive disclosures; neither should such disclosures be required of those seeking a process for proxy access.

For example, I am currently proposing a majority vote resolution for Whole Foods Markets to be voted on next year. I have no intention of running opposition candidates or a "withhold" campaign. I simply believe if directors at Whole Foods know they can be voted out of office, they will be more responsive to shareowners and will provide better counsel to CEO John Mackey. Mackey could have used their advice on blogging and dealing with the Federal Trade Commission. Getting the board more involved will better ensure the value of our investments going forward. As Nell Minow has so famously said, "boards are like subatomic particles -- they behave differently when they are being observed."

At heart, proxy access is a struggle for accountability. It is not enough that directors be "independent," especially when many CEOs set the reimbursement, perks, and meeting agendas of directors. Directors must recognize they are "dependent" on shareowners to be elected and re-elected to office. In most

9295 Yorkship Court Elk Grove, CA 95758
e-mail: jm@corpgov.net http://www.corpgov.net

cases, when proxy access is granted, it won't be used. The mere threat will be enough to get directors to be more vigilant.

At least two boards, Comverse and the Apria Healthcare Group recognized this tool to ensure accountability and approved their own access proposals. On June 5, 2003, for example, Apria's board approved the Policy Regarding Alternative Director Nominations by Stockholders (http://businessweek.brand.edgar-online.com/EFX_dll/EDGARpro.dll?FetchFilingHTML1?SessionID=K6EMI4St_vFTaFN&ID=3561692#A07040DDEF14A_HTM_117). The policy allows one or more stockholders who own at least 5% of Apria's stock, and who have maintained that ownership level for at least two years, to submit nominations for the Board of Directors and requires inclusion of information concerning their nominees in Apria's proxy materials.

What has been the Apria Healthcare experience with access? No shareowner nominations were made in 2004, 2005, 2006 or 2007. The absence of activity might be traced to the high 5% threshold for submitting nominations. However, it is also likely that the existence of the policy has encouraged directors to act more responsibly on behalf of shareowners.

Like majority vote requirements for the election of directors, access has broad shareowner support. During the 2007 proxy season, three proxy access resolutions were presented for vote and all were well received:

(1) a non-binding resolution was approved by shareowners of Cryo-Cell International;
(2) a non-binding resolution received 45.25% of votes cast by shareowners of UnitedHealth Group; and
(3) a binding resolution received 42.95% of votes cast by shareowners of Hewlett-Packard.

Unlike the complex cookie-cutter approach proposed by the SEC in 2003, neither the current proposal nor the actual proposals submitted since the AFSCME v. AIG decision embrace a "one-size fits all approach." That is good. Different thresholds and holding periods may be appropriate at different corporations. Any change to the currently mandated $2,000 and one year thresholds should be based on actual experience, not conjecture. A 1-5% threshold may be appropriate to placing shareowner nominees on the proxy, but not for simply proposing a resolution to allow such nominees in the future.

One has to ask the fundamental question, why is the SEC proposing a different share ownership threshold for proxy access? What's next? Will the SEC soon propose a different threshold for environmental or social resolutions? In the past, the Commission has considered higher ownership thresholds that would apply to all proposals (Exchange Act Release No. 19135: Oct. 14, 1982) and allowing a higher threshold to override some of the exclusions in Rule 14a-8 (Exchange Act Release No. 2597: Sept. 19, 1997 http://www.sec.gov/rules/proposed/34-39093.htm), but applying a higher threshold to a specific proposal would set a new and dangerous precedent, as well as adding complexity to an already arcane process.

9295 Yorkship Court □ Elk Grove, CA 95758
e-mail: jm@corpgov.net □ http://www.corpgov.net

While proxy access is different in that it goes directly to the heart of accountability, it is similar to many other mechanisms that may eventually lead to changing directors, such as majority vote, cumulative voting, repeal classified board, redeem or vote on poison pill, or the reimbursement for proxy expenses. All raise the risk of an increase in the number of election contests, yet the Commission has declined to allow such proposals to be excluded under Rule 14a-8 and the threshold remains unchanged. (see also J. Robert Brown at http://www.theracetothebottom.org/display/ShowJournal?moduleId=814441&registeredAuthorId=115997)

Instead of stripping the fundamental right of owners to propose meaningful changes to how their board representatives are elected, as both current proposals would effectively do (given the unrealistic 5% threshold required by S7–16–07 just to submit a resolution),[1] the SEC should allow market-driven innovation to continue, either by postponing any action on Rule 14a-8(i)(8) or by affirming its 1976 interpretation, 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." (AFSCME v. AIG) However, I would like to see the current language amended to raise the number of words allowed to 2,000 – 3,000 (500 is too short to set out shareowner nomination proposals) and to carve out an exception for proxy monitoring resolutions.

The "relates to an election" provision has been used to prevent proxy monitoring proposals, which would advise on director candidates, from appearing on the corporate proxy, such as those submitted by Mark Latham at Bristol-Myers Squibb, Pfizer, Citigroup, General Electric, Gillette and Warner-Lambert in 1999. See http://votermedia.org/corporations/proposals.html for the text and a portion of the correspondence between Latham and corporate representatives.

Even with access to the ballot for shareowner nominees, a "free-rider" problem would still limit intelligent analysis. Currently, institutional investors hire ISS, Glass Lewis and others to advise them on the issues surrounding resolutions and director elections. Most individual shareowners can't afford such services.

Yet, Latham estimates that even ISS only spends about $2,000 worth of time analyzing the average proxy for institutional investors subscribing to their service. The result is often "cookie cutter" advice that may not take into account sufficient industry and firm-specific information. Monitoring and choosing candidates takes time, money and expertise, as does voting intelligently among competing

[1] I agree with the many others who have commented that this threshold is too high. See, for example, CalPERS at http://www.sec.gov/comments/s7-16-07/s71607-294.pdf. Additionally, the threshold is contrary to the Commission's stated intent of facilitating the ability of shareowners to "exercise their state law rights." Most states do not impose an ownership requirement as a precondition for a shareowner proposal. Thus, any shareholder at the meeting could ordinarily make an access proposal. States that do impose ownership thresholds often allow them to be changed or even eliminated in the articles of incorporation. Rule 14a-8(b)(1) also imposes uniform national standards. However, unlike the proposed 5% threshold, they do not interfere with state law, given Rule 14a-8(i).

9295 Yorkship Court □ Elk Grove, CA 95758
e-mail: jm@corpgov.net □ http://www.corpgov.net

candidates. His proposals offer an opportunity for additional information based on hiring proxy-monitoring firms paid with corporate funds. The approach would solve the collective action problem and would allow shareowners to spend much larger sums to obtain more refined information.

In sum, the SEC wrote no-action letters allowing companies to bar the proposals on the basis that they could be excluded under rule 14a-8(i)(8) “as relating to an election for membership on its board of directors.” This exclusion should be amended to allow an exception for collectively hiring proxy advisors.

With regard to disclosures, as mentioned above, increased disclosures are not appropriate for simply sponsoring a resolution. Proponents of such resolutions should continue to fall under the provisions of Rule 14a-2(b), which exempts access proponents that are not nominating a candidate for the board and are not seeking proxy voting authority with respect to the current meeting. Additional disclosures may be appropriate to director candidates, once access is implemented…although in the interest of equity, any disclosures required of shareowner nominated candidates should also apply to those nominated by the board.

The proposed language regarding the disclosure of correspondence and conversations between candidates or sponsors and the company are too burdensome. The need for such documentation is not adequately addressed in the SEC’s proposal. More importantly, such a framework would tend to set up a confrontational and expensive process. The SEC should be promoting cooperative dialogue between management, board members, and shareowners, instead of raising barriers that would inhibit such dialogue.

The SEC should carefully monitor the implementation of access proposals to determine what, if any, additional disclosures are advisable and should address such needs in a future rulemaking.

With regard to shareowner forums, I support the proposed Rule 14a-18, which would provide a safe harbor for a shareowner or a company to establish an electronic shareowner forum. Rule 14a-18 would exempt from the definition of the term “solicitation,” communications made on an electronic shareowner forum by any person who does not seek a proxy if made more than 60 days prior to the date announced by the company for its annual or special meeting of shareowners. Under Rule 14a-18, no shareowner or company would be liable under federal securities law for any statement made by another person on an electronic shareowner forum.

Although existing “chat-rooms” are generally of little value in discussing corporate governance issues, I am optimistic that innovative companies will be able to design forums that can provide a valuable supplement to the formal resolution process by providing a forum to float ideas and determine levels of interest. However, I strongly oppose the substitution of such forums as a substitute for binding or nonbinding proposals under the existing Rule 14a-8 process.

With regard to the SEC’s “opt-out” trial balloon, I oppose the idea. Annually,

9295 Yorkship Court Elk Grove, CA 95758
e-mail: jm@corpgov.net http://www.corpgov.net

approximately one-quarter to one-third of resolutions are withdrawn because constructive dialogue with companies results in win-win agreements. The rising number of votes supporting shareowner resolutions across a range of governance, environmental, and social topics is evidence of the mounting importance of shareowner resolutions to the general investing public.

As pointed out by many commentators and thousands of emails, an opt-out option would have significant negative consequences. It would further the distance between management and owners, especially at companies where such relations are already strained, since these would be the most likely to opt-out. Confrontation would increase, as would lawsuits and binding bylaw resolutions.

The current shareowner proposal process is the product of 60 years of rulemaking, judicial guidance and industry practice. Shareowners and companies alike benefit from the predictability and relative consistency of the staff's interpretive positions under Rule 14a-8, as well as a growing body of court decisions. The SEC should continue its current practice of periodically reexamining and adjusting Rule 14a-8 and should drop the opt-out concept.

Additional Suggestions

SEC Rule 14a-8(h)(3) requires that a proponent or representative of a resolution contained in the company proxy must not only attend the annual meeting, but must actually present the proposal. If they fail to do so, the company can exclude all of the proponent's proposals from its proxy materials for any meetings held in the following two calendar years. However, there is no clear rule requiring companies to allow shareowners to present their proposals. Shareowners are in a "Catch 22" situation. Whole Foods Markets, for example, refused the right of shareowners to present their resolutions during the business portion of their annual meeting in March 2006. The Commission should amend its rules to clearly require companies to allow shareowners time during the business portion of the meeting to present their resolutions.

The Commission should also consider 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 and as raised in their comments on this current rulemaking by John C. Wilcox and Hye-Won Choi for TIAA-CREF (see http://www.sec.gov/comments/s7-16-07/s71607-199.pdf). This approach would permit shareowners or groups representing 3% or more of a company's outstanding shares to override a decision by the Commission staff to exclude a shareowner proposal under Rule 14a-8(i)(5) (Relevance) and (i)(7) (Management Functions). However, the previously recommended 3% threshold should be lowered to 1%, since that would be less burdensome but would still represent a significant hurdle and would ensure "real" "ordinary business" is kept off the proxy.

Rule 14a–8(i)(7), for example, has been used to justify excluding resolutions to allow shareholders to put forth a resolution to specify the procedure for shareowners to select the auditor. (see 2003 correspondence concerning USG Corporation and HRPT Properties re proposals from Mark Latham at

9295 Yorkship Court □ Elk Grove, CA 95758
e-mail: jm@corpgov.net □ http://www.corpgov.net

http://votermedia.org/corporations/proposals.html) After what Arthur Anderson was accused of in the Enron case, I don't know how selection of an auditor that may have conflicts of interests can be considered "ordinary business." An "override mechanism" would at least allow such proposals to move forward if they have significant shareowner support.

I have also attached an outline of some of the additional questions raised in the release and my responses. I hope this is helpful. Again, thank you for attempting to address the vitally important issue of proxy access.

Sincerely,

James McRitchie

Attachment

9295 Yorkship Court □ Elk Grove, CA 95758
e-mail: jm@corpgov.net □ http://www.corpgov.net

SEC Release No. 34–56160; IC–27913; File No. S7–16–07. Questions and Answers.
I've tried summarize several of the major questions. My response is in *italics*.

I. Overview
II. Proposed Amendments to the Proxy. Rules and Related Disclosure Requirements.
A. Proposed Amendments Concerning Bylaw Proposals for Shareholder Nominations of Directors
1. Background Regarding the Election Exclusion in Rule 14a–8(i)(8)
2. Proposed Amendment to Rule 14a–8(i)(8) Concerning Bylaw Amendments on Procedures for Shareholder Nominations of Directors.

Request for Comment.
Are the disclosure-related requirements for who may submit a proposal appropriate?

As explained in my letter, the Schedule 13G regime should only apply to those proposing proxy access that own more than 5% of the company's securities.

Should the 5% ownership threshold be higher or lower? Should the ownership percentage depend on the size of the company? For example, should it be 1% for large accelerated filers, 3% for accelerated filers and 5% for all others? If the eligibility requirement should be different from 5%, should we nonetheless require the filing of a Schedule 13G or otherwise require disclosure equivalent to a Schedule 13G?

Under state law, shareowners generally have the right to propose bylaws at the meeting. Such rights are now effectively empty, since most shares are voted through proxies. Rule 14a-8 mitigates this impact by allowing the proxies to operate as a substitute for the shareowner meeting. Any restrictions, beyond the current $2,000 minimum held for a year, work against the intention of enabling shareowners "to control the corporation as effectively as they might have by attending a shareholder meeting."

Is the one-year period appropriate? Should each member of a group of shareholders individually satisfy this holding requirement?

Yes, as explained above, any restrictions, beyond the current $2,000 minimum held for a year, would work against the intention of enabling shareowners "to control the corporation as effectively as they might have by attending a shareholder meeting." Therefore, these thresholds should also apply to proxy access proposals. Groups would not be needed to reach the $2,000 requirement, and so the second question is moot.

Should we use an eligibility requirement other Schedule 13G for shareholders of companies whose securities are not "equity securities?"

Should be N/A per above.

Should the Commission provide an exemption that would enable a shareholder who acquires shares with the intent to propose a bylaw amendment to file on Schedule 13G?

Should be N/A per above. As explained in my comment letter, the SEC's proposal appears to assume proxy access resolutions will be submitted primarily by shareowners that intend to then nominate candidates. This is a false assumption. Those most likely to propose such resolutions are large "universal owner" institutional investors, such as CalPERS, CalSTRS, AFCME and others. They will do so to promote good governance and accountability, just as they currently sponsor resolutions to ensure that directors are elected by majority vote. Private equity firms are most likely to actually to actually put forward director nominees.

Is the existing 500-word limit sufficient to form a proposal to establish a procedure for shareholder nominees?

9295 Yorkship Court □ Elk Grove, CA 95758
e-mail: jm@corpgov.net □ http://www.corpgov.net

The 500-word limit is too short. Apria Healthcare adopted a policy in 2004. It ran well over 500 words. see http://www.sec.gov/Archives/edgar/data/882289/000089256904000370/a97459ddef14a.htm#156 I believe 2,000 to 3,000 words for the proposal, including an accompanying supporting statement, would be adequate.

In seeking to form a 5% group, shareholders may wish to communicate with one another, triggering application of the proxy rules. Should such communications be exempt from proxy rules? Under what parameters?

As discussed above, shareowners should not have to `form 5% groups to submit such resolutions. Therefore, N/A.

Is there tension between the requirement in Schedule 13G that the securities not be held to change or influence control and proposing a bylaw amendment to establish procedures for including shareholder nominated candidates on the proxy? Should we establish a safe harbor depending on the number of candidates sought?

As discussed above, shareowners should not have to form 5% groups to submit such resolutions. Therefore, N/A. However, a safe harbor would be appropriate for shareowners nominating directors where those directors, if elected, would constitute less than half the board.

3. Proposed Disclosure Requirements Related to Shareholder Proponents and Nominating Shareholders
a. Overview of Requirements Applicable to Shareholder Proponents
b. Proposed New Item 8B of Schedule 13G
c. Proposed New Item 8C of Schedule 13G
d. Proposed New Item 24 to Schedule 14A

Request for Comment

Is the proposed level of required disclosure appropriate, necessary? Should the company be allowed to avoid duplicating disclosure? Additional disclosures or background? Is 12 months prior to forming plans the appropriate timeframe? If the SEC permits holders of less than 5% of a company's securities to submit bylaws proposals, is there a disclosure provision in the federal securities laws other than the 13G framework that would be appropriate?

As discussed above, shareowners should not have to form 5% groups to submit such resolutions. Requirements for disclosures should apply only to 5% shareowners actually nominating directors.

Is it appropriate to require any additional disclosure by shareholders and/or the company in connection with a proposed bylaw or only when a shareholder actually seeks to nominate a director in accordance with already adopted bylaws?

Additional disclosure should be required only when a shareholder actually seeks to nominate a director in accordance with already adopted bylaws. Again, many proponents of proxy access bylaws will simply be seeking the insurance such bylaws provide and will have no intention of nominating candidates themselves.

e. Disclosure by Nominating Shareholders — Proposed New Rule 14a–17
f. Liability for, and Incorporation by Reference of, Information Provided by the Nominating Shareholder
g. Filing Requirements
h. Proposed New Rule 14a–17(b)–(c) and Item 25 of Schedule 14A

Request for Comment

Are types, amount and timing of disclosure appropriate? Should the information be on the Web site and proxy materials or should the shareholder instead be responsible? Is the proposal clear? What if the company knows statements are not accurate? What other disclosures, if any, would

be material to investors and why?

As discussed above, shareowners should not have to form 5% groups to submit such resolutions. Requirements for disclosures should apply only to 5% shareowners actually nominating directors.

B. Electronic Shareholder Forums
1. Background
2. Proposed Amendment To Facilitate the Use of Electronic Shareholder Forums

Request for Comment

Are additional steps necessary to assure that federal securities laws do not hinder the development of electronic shareholder forums? Should we be more prescriptive in our approach, such as by providing direction as to whether a forum is available for nonbinding referenda or whether the forum assures the anonymity of shareholders? Does the proposed rule adequately address liability concerns? Should the solicitation exemption apply more broadly to all communications? Is the 60-day limitation sufficiently long to protect shareholders from unregulated solicitations? Should the time period be shortened (*e.g.*, 30 or 35 days) or lengthened (*e.g.*, 75 or 90 days)? Is there a better alternative? Should we require that the electronic shareholder forums be taken down within 60 days of a scheduled meeting? Should shareholders who continue file any communications that are solicitations in compliance with Regulation 14A? How would the forums be policed to ensure that the responsible parties are properly filing? Should shareholders be able to use a forum to solicit other shareholders to form a 5% group in order to submit a bylaw proposal?

While it is appropriate for the SEC to encourage shareowner forums, which currently are populated by day traders focused almost entirely on the short term, I oppose any move to substitute an electronic petition model or "chat room" for the time-tested, vibrant, and public 14a-8 shareowner resolution process. It took about 50 years between codification of this right until shareowners actually won a majority vote on a resolution. Forums open only to shareowners, where corporate representatives actually post responses, might encourage the 60-70% of retail shareowners who don't bother to vote to be better informed on corporate governance issues. It could also be used to help determine potential support for resolutions and may lead to proposals not being submitted if it can be determined they aren't likely to be supported.

However, this educational tool should not be seen as a substitute for the more formal resolution process. Those of us who own stocks in dozens of companies cannot possibly keep up with chat room petitions. For large institutional investors and companies monitoring would much more expensive than the current resolution process. They wouldn't be able to ignore such forums. I think voting rights in surveys (especially if instituted as a substitute for proxy resolutions) could be considered a plan asset subject to fiduciary duty, despite the SEC's proposed provision that answering surveys isn't voting.

C. Request for Comment on Proposals Generally
1. Bylaw Amendments Concerning Non-Binding Shareholder Proposals
Should the SEC 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?

I oppose any move to eliminate the time-tested, vibrant, and public 14a-8 shareowner resolution process. As indicated above it took 50 years until shareowners actually won a majority vote on a resolution. These resolutions address a range of topics of concern to the investors who own these companies and have resulted in positive changes in executive compensation, environmental practices, and governance practices, among others. Majority support for such proposals has risen dramatically from 16% in 2000 to 23% in 2006. This provides evidence that the process works and is supported by the owners of corporations. Such resolutions provide an important means for shareowners to voice their wishes regarding important social and governance issues, while allowing management flexibility in determining implementation.

Would it be appropriate to require the shareholder (or group of shareholders) that submits the proposal to file a Schedule 13G?

As discussed above, I oppose any move to do away with nonbinding resolutions.

Should a shareholder proposing such a bylaw amendment be required to have continuously held a certain percentage of the company's securities for a specified holding period?

I oppose any move to do away with nonbinding resolutions.

Should a proposal be required to otherwise satisfy the requirements of Rule 14a–8 and not fall within one of the other substantive bases for exclusion? Should the 500-word limit be different? If so, should the word limit be increased to 3,000 words to permit a more thorough description of the proposed procedural framework and in accordance with the approximate word count in current Rule 14a–8? If not 3,000, should it be higher or lower?

As discussed above, I oppose any move to do away with nonbinding resolutions.

Should the substance of the procedure for nonbinding proposals contained in a bylaw amendment not be defined or limited by Rule 14a–8, but rather by the applicable provisions of state law and the company's charter and bylaws? (*e.g.*, the framework could specify different eligibility requirements than provided in current Rule 14a–8, different subject-matter criteria, different time periods for submitting non-binding proposals to the company, or different resubmission thresholds; or it could specify that non-binding proposals would not be eligible for inclusion in the company's proxy materials, or alternatively that all nonbinding proposals would be included in the company's proxy materials without restriction, if these approaches were consistent with state law and the company's charter and bylaws).

I oppose any move to do away with nonbinding resolutions.

Should bylaw proposals for establishing procedures for nonbinding proposals be binding on the company if approved by shareholders? Is there any reasonably foreseeable situation where intervention by the Commission or its staff would be critical to the proper functioning of bylaw procedures for non-binding proposals? Is it practical and feasible to rely on state courts as the arbiter of disagreements between companies and shareholders over the company's bylaws as they apply to nonbinding resolutions?

I oppose any move to do away with nonbinding resolutions.

Should the Commission encourage proponents to include a fair and efficient mechanism for resolving any disagreements between the company and the shareholder as to the bases for inclusion or exclusion of a proposal? Should shareholders later be able to submit another non-excludable bylaw procedure that removes or amends a previously adopted non-binding procedure?

I oppose any move to do away with nonbinding resolutions.

How might shareholders' overall ability to communicate with management and other shareholders be improved or diminished if shareholders were able to choose different procedures for non-binding proposals than those currently in Rule 14a–8?

Such communications would be dramatically reduced, especially at companies with poor governance practices. I would also expect a dramatic increase in the introduction of binding bylaw resolutions that would result in costly litigation as management is forced to implement language that may be poorly crafted. It would also lead to more boycotts and proxy contests, especially where shareowners will seek reimbursement of expenses. Cut off access to the resolution process and shareowners will seek other venues to address their concerns. These venues will be much more expensive for companies and will cause a greater diversion of resources that might otherwise be returned to shareowners or be used to drive business expansion and increase shareowner value.

Should a Board be able to adopt a bylaw setting up a separate procedure for non-binding

9295 Yorkship Court Elk Grove, CA 95758
e-mail: jm@corpgov.net http://www.corpgov.net

shareholder proposals and be able, under our proxy rules, to follow that procedure in lieu of Rule 14a–8 with regard to non-binding proposals?

I oppose any move to do away with nonbinding resolutions.

Should such procedures be deemed to comply with Rule 14a–8 if the bylaw is not approved by a shareholder vote, provided that state law authorizes the adoption of such a bylaw without a shareholder vote?

I oppose any move to do away with nonbinding resolutions.

Should a bylaw proposed and adopted by a company prior to becoming subject to Exchange Act Section 14(a) be deemed to comply with Rule 14a–8 once the company became subject to Exchange Act Section 14(a)?

No.

Should such companies be required to disclose the rights of shareholders (or lack of such rights) with respect to the submission of non-binding shareholder proposals as part of the description of its equity securities in its Securities Act and Exchange Act registration statements?

I oppose any move to do away with nonbinding resolutions.

If not, should companies instead be required to submit the bylaw to a shareholder vote once the company becomes public and subject to Section 14(a) of the Exchange Act, either at a special meeting or an annual meeting? Is there a concern that affiliates of a company could obtain a sufficient number of votes to adopt a bylaw without obtaining a vote of the nonaffiliates? Should the federal proxy rules further restrict the operation of bylaw provisions once a company is subject to Section 14(a) limiting the ability of affiliates to ratify a bylaw, or require the bylaw procedure be periodically re-approved by shareholders? Are such needs mitigated since bylaws can generally be revised or repealed at any time after adoption?

Companies should not be able to take away the right of shareowner to submit nonbinding resolutions.

Should the Commission enable companies to follow an electronic petition model for nonbinding shareholder proposals in lieu of Rule 14a–8?

As discussed above, I oppose any move to eliminate the time-tested, vibrant, and public 14a-8 shareowner resolution process. Such resolutions provide an important means for shareowners to voice their wishes regarding important social and governance issues, while allowing management flexibility in determining implementation. If companies want to set up such discussion forums, current law allows them to do so. Any such forums should not be a substitute for the shareowner resolution process.

Should the Commission amend the rule to change the existing ownership threshold to submit other kinds of shareowner proposals?

Again, any such forums should not be a substitute for the shareowner resolution process.

Would a higher ownership threshold, such as $4,000 or $10,000, and resubmission thresholds of 10%, 15%, and 20% be appropriate?

The ownership threshold of $2,000, which was last adjusted in May 1998, could be reasonably adjusted upward, but only to the extent such an adjustment is tied to the consumer price index, adjusted for inflation. Resubmission thresholds should not be changed. It can take years for significant issues to take hold.

Are there any areas of Rule 14a–8 in which changes or clarifications should be made (*e.g.*, Rule 14a–8(i)(7) and its application with respect to proposals that may involve significant social policy

9295 Yorkship Court Elk Grove, CA 95758
e-mail: jm@corpgov.net http://www.corpgov.net

issues)?

Rule 14a–8(i)(7) has been used to justify excluding resolutions to allow shareowners to put forth a resolution to specify the procedure for shareowners to select the auditor. (see 2003 correspondence concerning USG Corporation and HRPT Properties re proposals from Mark Latham at http://votermedia.org/corporations/proposals.html) After what Arthur Anderson was accused of in the Enron case, I don't know how selection of an auditor that may have conflicts of interests can be considered "ordinary business." The "ordinary business" rule should either be should be dramatically narrowed to enable proposals such as Latham's and/or an "Override Mechanism," allowing shareowners or groups representing 1% or more of a company's outstanding shares to override a decision by the Commission staff to exclude a shareowner proposal under Rule 14a-8(i)(5) (Relevance) and (i)(7) (Management Functions).

Currently, Item 4 in Part I of Form 10–K and Form 10–KSB and Item 4 in Part II of Form 10–Q and 10–QSB require a company to disclose information regarding each matter voted upon at the meeting. Should additional disclosure be provided for non-binding shareholder proposals, such as votes as a percentage of the total outstanding proposal or as a percentage of the total votes cast?

Yes, companies should be required to also report votes as a percentage of total votes cast and voting rights exercised without an economic interest in the underlying security should be reported separately.

2. Other Requests for Comment
Would adoption of the proposed rules conflict with any state law, federal law, or rule of a national securities exchange or national securities association?

Yes, as discussed above, the 5% thresholds conflicts with state laws.

As the Commission staff noted in its July 15, 2003 Staff Report, ''Review of the Proxy Process Regarding the Nomination and Election of Directors,'' technological advances have the potential to substantially reduce the costs of proxy solicitation, including ''E-Proxy'' rules and electronic shareholder forums. "Will these technological advances reduce the costs of proxy solicitations for both companies and those that solicit in opposition to a company?"

I expect they will but I reject the assumption that proxy solicitations are in "opposition to a company," even though they may be in opposition to current directors or management.

Should bylaw proposals establishing a shareholder director nomination procedure be subject to a different resubmission standard than other Rule 14a–8 proposals?

Rule 14a-8 standards should apply and should be changed only with respect to the number of words; 2,000 to 3,000 should be allowed.

As proposed, the federal proxy rules would not establish a vote threshold for a bylaw procedure since such thresholds are established by state law and a company's governing documents. Is such reliance appropriate?

Yes. Shareowners should not be confined to a cookie-cutter, one-size-fits-all approach.

Should a different federal standard be required vote to adopt a bylaw procedure, such as the majority of shares entitled to vote on the proposal, or a supermajority vote?

No. *Shareowners should not be confined to a cookie-cutter, one-size-fits-all approach.*

Our proposals assume that the existing exemptions for solicitations are sufficient to include soliciting activities of shareholders that are seeking to form a more than 5% group. Is our assumption correct? Is there an alternative to the proposal regarding shareholder director nomination bylaws that would provide a preferable? For example, should shareholders be able to propose a bylaw amendment only where there has been a majority withhold vote and the director

or directors do not resign?

No soliciting to form a more than 5% group should be required. As discussed above, thresholds should remain at $2,000 (adjusted for inflation) and one year. Standards provided in Rule 14a–8 should be changed only with respect to the number of words; 2,000 to 3,000 should be allowed.

Is there an alternative that would enable shareholders to conduct election contests without incurring the expense of a traditional contest and without being placed on the company ballot such as pure electronic solicitation? Should we amend Rule 14a–2(b)(1) to enable shareholders to solicit more than the current ten without being required to furnish a proxy statement?

As indicated above, shareowner shouldn't need to form groups to submit proxy access proposals. However, the limit of ten should be lifted altogether where a shareowner has been able to place short-slate nominees on the corporate proxy.

Would additional amendments to the system for reporting beneficial and other ownership interests in securities be appropriate? Are there areas where additional disclosures would be appropriate (*e.g.*, with regard to the exercise of voting rights without an economic interest in the underlying security)? Are there ways in which the system could be simplified (*e.g.*, by combining the reports required to report beneficial and other ownership interests)?

As indicated in my letter, the SEC should address the following issues:

- *Require companies to allow shareowners to present their proposals during the business portion of their annual meeting.*
- *Narrow the "an election" to allow resolutions requesting that a company hire a proxy advisor or monitor based on shareowner vote so that such advice can include advice on voting for board of director candidates.*
- *Adopt an "Override Mechanism" for Rule 14a-8, as recommended in the proposed Amendments to Rules on Shareholder Proposals in 1997 permitting shareowners or groups representing 1% or more of a company's outstanding shares to override a decision by the Commission staff to exclude a shareowner proposal under Rule 14a-8(i)(5) (Relevance) and (i)(7) (Management Functions).*

9295 Yorkship Court Elk Grove, CA 95758
e-mail: jm@corpgov.net http://www.corpgov.net