

2 October 2007

rule-comments@sec.gov

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

Dear Ms Morris

**File Numbers S7-16-07 and S7-17-07: Shareholder Proposals and
Shareholder Proposals Relating to the Election of Directors**

IMA is the trade body representing the UK asset management industry. IMA members include independent fund managers, the asset management arms of banks, life insurers, investment banks and occupational pension scheme managers. They are responsible for the management of approximately £3 trillion of funds (based in the UK, Europe and elsewhere), including institutional funds (e.g. pensions and life funds), private client accounts and a wide range of pooled investment vehicles. In particular, our members manage 99% of UK-authorized investment funds.

IMA members are major investors in companies whose securities are traded on regulated markets and engage with these companies, enter into an active dialogue and decide how their shares will be voted on the principals' behalf. As they invest internationally, they are likely to have interests in companies listed on the US market. It is from this standpoint that we have an interest in the SEC's consultation on shareholder proposals for procedures for nominating directors, on exempting participation in an electronic forum from the proxy rules and on clarifying the exclusion in Rule 14a-8(i)(8).

We welcome the Commission undertaking this consultation and giving us the opportunity to comment. 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 investors. We consider that directors have a duty to act in the best interests of the company and its shareholders, and as such they should be accountable to their company's shareholders and shareholders should have a role in their appointment. To date Rule 14a-8 has played an important role in promoting best practice on such matters as majority voting in director elections and advisory votes on executive remuneration and we do not believe that new rules are necessary, other than to address the removal of directors (see penultimate paragraph). Indeed, we consider that the proposals in S7-16-07 are too complex and would inhibit investors' ability to establish procedures for the nomination of

directors, nor do we agree with the proposal in S7-17-07 which broadens the existing exclusion. We set out below our main reservations.

- We consider that the detailed disclosures proposed of those wishing to submit a proposal would act as a deterrent and go far beyond the level of transparency that would be useful to the market. In essence, we do not believe that the proponents of a proposal for director nomination procedures should be treated any differently from other Rule 14a-8 proponents. Furthermore, the detailed disclosures envisaged could cause delays and could alter the nature of investors' engagement with investee companies.
- We understand that as in the US companies tend to have a much larger capitalization than companies in other markets, even major investors will tend to hold a smaller proportion of a company's total issued capital. Thus we consider that the five per cent ownership threshold proposed could significantly reduce the ability of shareholders to submit a bylaw proposal for procedures for the nomination of directors. Furthermore, a five per cent threshold would also trigger a number of onerous continuous disclosure requirements. Should the Commission adopt these proposals, and we would prefer that the status quo is retained, we consider it should test a much lower threshold, assess the appropriate level and keep it under review.
- We recognise the importance of ensuring that shareholders do not simply acquire shares for the purposes of changing or influencing the control of a company. However, these proposals are not about control but about the process whereby shareholders can file a bylaw proposal for procedures for the nomination of directors. This is far removed from the position when control can be changed and we do not consider that shareholders should have to hold securities continuously for more than a year in order to be able to submit such a proposal. We consider that all holders of a particular class of security should be treated equally regardless of the time they have held the securities.
- We do not believe that companies should be allowed to follow an electronic model for shareholder proposals in lieu of Rule 14a-8. Currently, every investor receives the proxy material and has the opportunity to study the issue. Chat rooms and electronic forums are helpful additional tools of communication but to make them substitutes ignores the ongoing importance of the shareholder resolution process. Furthermore, electronic forums are not necessarily available to all shareholders.
- The proposal in S7-17-07 broadens the exclusion in Rule 14a-8 to allow companies to exclude proposals that relate to a nomination or an election for membership on the company's board of directors or analogous governing body or *a procedure for such nomination or election*. We consider that the Commission should only apply the exclusion to shareholder proposals that relate to a particular election and not to proposals that establish the procedural rules governing elections generally. To do so would be confusing two different activities – establishing a nomination process and waging an election contest. In setting up a nomination process, shareholders are establishing an accountability mechanism that warns companies and which

can be implemented in the future if necessary. They will not necessarily have a candidate in mind or be seeking to wage an election contest

In conclusion, we do not believe that the proposals in S7-16-07 and S7-17-7 are in the best interests of shareholders and should be adopted in that no action would be preferable. That said, in most major capital markets outside the US, shareholders have the right to vote against those directors who under perform or who disregard shareholder concerns. Generally shareholders will support the directors of the companies in which they invest and will only consider removing them in extremis. But the ability to do so is a powerful accountability mechanism and is as important as shareholders' rights to nominate directors. We consider that it would be timely for the US to consider establishing procedures whereby directors can be removed by a simple majority, i.e. more than fifty percent, of the votes, and go beyond directors' resignation procedures.

Thank you again for giving us the opportunity to comment on the proposals. I trust that this letter is self-explanatory but please do contact me if you require any clarification or if you would like to discuss any issues further.

Yours sincerely



Liz Murrall – Senior Adviser Corporate Governance