October 2, 2007

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

Re: Shareholder Proposals Relating to the Election of Directors
Release No. 34-56161; File Number S7-17-07; 72 Federal Register 43488
(August 3, 2007)

Shareholder Proposals
Release No. 34-56160: File No. S7-16-07; 72 Federal Register 43466

Dear Ms. Morris:

The American Bankers Association (ABA)[1] and America's Community Bankers (ACB)[2] welcome this opportunity to comment on the two proposals issued by the U.S. Securities Exchange Commission (Commission) concerning shareholder access to company proxy materials for shareholder director nominees. The first proposed rule referenced above or the "short-proposal" would clarify the meaning of the exclusion for shareholder proposals related to the election of directors that is contained in Rule 14a-8(i)(8) under the Securities Exchange Act of 1934 (Exchange Act). The proposal would codify the Commission's interpretation of this rule in response to concerns raised by the decision of the U.S. Court of Appeals for the Second Circuit in *American Federation of State, County & Municipal Employees, Employees Pension Plan v. American International Group, Inc.*, (*AFSCME*).[3]

The second above referenced proposal or "long-proposal" would enable shareholders to include in company proxy materials proposals for binding bylaw amendments that would establish procedures for shareholders to nominate directors for election to the board of directors subject to state law and the company's charter and bylaws. Under this proposal,

[1] ABA brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership—which includes community, regional, and money center banks and holding companies, as well as savings associations, trust companies, savings banks, and bankers banks—makes ABA the largest banking trade association in the country.

[2] ACB is the national trade association committed to shaping the future of banking by being the innovative industry leader strengthening the competitive position of community banks. To learn more about ACB, *visit www.ACB.us.*

[3] 462 F.3d 121 (2d Cir. 2006).

shareholders would be required i) to continuously own more than 5% of the company's stock for at least one year before the proposal is submitted; ii) be eligible to file and file a Schedule 13G that requires disclosures regarding the shareholders background and interactions with the company; and iii) to otherwise satisfy the requirements of Rule 14a-8. This proposal would also add a new rule that would facilitate interaction among shareholders and between the company and shareholders through an electronic shareholder forum.

Position

ABA and ACB strongly support the SEC's "short proposal" that would clarify and codify the Commission's interpretation of Rule 14a-8(i)(8) that a company may exclude from proxy materials shareholder proposals that could result in an election contest or establish a process for shareholders to conduct a future election contest by requiring the inclusion of a shareholder nominee in subsequent proxy materials. We believe that this proposal re-establishes the appropriate balance between state corporate law and governance and the Commission's concerns for investor protection. We further urge the Commission to expedite the adoption of this proposal as a final rule to eliminate any confusion and uncertainty that may result from the AFSCME decision regarding the application of Rule14a-8(i)(8).

ABA and ACB strongly oppose the "long-proposal" and ask the Commission to withdraw the proposal and require shareholders who want to propose director nominees to do so under existing proxy rules for proxy contests. We believe the proposal, if adopted, could be unduly disruptive to publicly traded company boards and, as we discuss below, potentially result in unforeseen and unfortunate consequences for bank fiduciaries.

Background and General Comments

AFSCME v. AIG

The Commission has considered the issue of shareholder proxy access at various times over the years. Last fall, the Commission's interpretation of Rule 14a-8(i)(8), which allows a company to exclude shareholder proposals for director nominations, was called into question by the Second Circuit Court of Appeals in *AFSCME*. In *AFSCME*, the Second Circuit determined that because of perceived inconsistencies with past Commission interpretations, Rule 14a-8(i)(8) could not be relied upon by a company to exclude a shareholder proposal that would amend a company's bylaws and permit shareholders to include director nominees in a company's proxy materials.

The Commission is concerned that the Second Circuit's decision will result in uncertainty and confusion as to the appropriate application of Rule 14a-8(i)(8). Furthermore, the

Circuit Court's decision limits the Commission's staff's ability to interpret the rule. ABA and ACB share this concern and urge the Commission to expeditiously adopt the "short-proposal' to ensure clarity and continuity in application..

Corporate Governance Reforms

Many of the shareholder concerns raised by corporate fraud scandals were addressed when Congress enacted the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley). Sarbanes-Oxley requires corporate responsibility for financial reporting and the establishment of board audit committees comprised of independent audit committee members. The corporate governance reform efforts, however, did not stop at audit committees. Because of Sarbanes-Oxley, the SEC and the national stock exchanges went beyond audit committee reforms and adopted additional rules and listing standards for corporate governance compliance.

The New York Stock Exchange requires companies to adopt a code of conduct and ethics for directors. It also requires listed companies to have three committees: an audit, nominating or corporate governance, and compensation committee, composed entirely of independent directors. These rules and listing standards provide additional protections for shareholders. The Nasdaq Stock Market, Inc., requires director nominations to be made by either a nominating committee comprised of independent directors or by a majority of the company's independent directors.[4] These corporate governance reforms require more independent and effective boards and expand the opportunities for shareholders to have their interests and concerns represented and considered by boards of directors

Furthermore, in 2003 the Commission adopted rules that require companies to disclose more information in proxy statements concerning a company's nominating committee and its procedures for nominating directors.[5] Shareholders that wish to nominate a director candidate may do so by submitting names to the nominating committee. It is our understanding that nominating committees do take these shareholder nominations quite seriously.

Furthermore, our members report that, as banks, their nominating committee charters require the committee to seek director candidates that would bring to the board diversity, a business background balance, and community representation as well as appropriate financial experience and expertise. The nominating committee is most effective in evaluating nominees that will best serve the interests of the company and shareholders.

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[4]See SEC Release No. 34-48745, National Association of Securities Dealers, Inc.; New York Stock Exchange, Inc. Rulemaking Relating to Corporate Governance; Sec Release No. 34-48872, American Stock Exchange LLC Rulemaking Relating to Corporate Governance.
[5]17 C.F.R. § 240.14a-101.

Corporate Governance Concerns

Under state corporate law the principals of corporate governance are well established. Permitting shareholders to nominate director candidates using a company's proxy materials disrupts these principals. Election contests are costly. Furthermore, shareholder access allows for the nomination and potential election of special interest directors. If elected, such directors can disrupt board proceedings and create adversarial relationships that may prevent the board from acting quickly and responsively on critical issues.

Shareholders' access to a company's proxy materials would open up the proxy process to a few aggressive shareholders with their own narrow interests that are not necessarily representative of the interests of the majority of shareholders. These special interests may not be in the best interests of the company and may run counter to the initiatives for independent boards. Often these proposals involve political, social or environmental causes that have little bearing on a company's business, its profitability or the community which it serves. This is particularly true when special interest shareholders vie for Board seats in order to force a company into an eventual sale.

Boards of directors are not political entities attempting to balance competing interests. Boards of directors are governance bodies that oversee the company's strategic plan and management. They work cooperatively to further the mission of the company and enhance shareholder value. For boards of banks, this mission is the contribution that the business of banking makes to the economic growth of communities.

Shareholder Contested Elections

We believe that adoption of the "long-proposal" is unnecessary, because the Commission has in place proxy rules that govern shareholder proposals to nominate directors in contested elections. A contested election results when shareholders are permitted to include their nominees for director in opposition to the company's nominees. The "long-proposal" would make it easy for shareholders to engage in costly and disruptive contested elections.

Existing Commission rules permit shareholders to conduct a proxy contest using a separate proxy solicitation. Proxy materials must be filed with the Commission, and the proxy statement must contain adequate disclosures concerning the nominees as required for management solicitations. This separate shareholder solicitation provides several advantages, such as providing a clear distinction between company nominees and shareholder nominees and requiring shareholders to be responsible and accountable for preparing and disseminating information about shareholder nominees. Although this process is more costly, shareholders should be expected to assume some costs to validate

the shareholder's proposal. Even at that, the Commission's new rules permitting electronic dissemination of proxy materials is likely to reduce the cost of proxy solicitations.

Specific Concerns for the Banking Industry

ABA and ACB strongly believe that shareholder access to corporate proxy materials is not appropriate in the highly regulated banking industry. Directors of publicly held banks are subject to a complex framework of federal and state banking laws and regulations. These laws and regulations have their own standards of eligibility for directors. Bank regulators require banks to file an application or notice with a banking agency before adding a director to the board. Individuals convicted of criminal offences or subject to cease and desist orders for conduct involving dishonesty or breaches of trust are prohibited by regulation from serving as directors of financial institutions. Whether private or public, banks with assets of over a billion dollars are required to have independent audit committees, and bank examiners review board minutes to evaluate board actions, including executive officer compensation.

Individuals that are considered for election as directors of banks must have the expertise and skills to discharge their fiduciary duties in this highly regulated banking industry. Not only do the directors answer to shareholders, they also answer to federal and state regulators. A shareholder nominee may not be fully aware of these responsibilities and duties and may not have the credentials necessary or the desire to perform them in a satisfactory manner. This is particularly true if the shareholder's issue is political or narrowly focused.

We are particularly concerned with shareholder director nominees and access to the proxy process as it relates to mutual institutions. These proposals may discourage these institutions from converting to stock form. In addition, expansion of Rule14a-8 to allow shareholder director nominees could give investors with narrow self-interests additional leverage to force a sale or merger of a mutual institution after conversion. These shareholders are often looking only to receive gains from their stock ownership and are not concerned with the long-term governance of the institution.

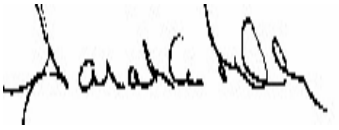
The proposal to give shareholders access to the proxy may have unforeseen consequences and we urge careful consideration of these possibilities. Trust and fiduciary bankers have questioned whether they could potentially be sued by trust beneficiaries for failing to seek to replace directors on company boards when companies in which the beneficiaries are invested do not perform as well as they have in the past. As the Commission is aware, it is not uncommon for beneficiaries to bring suits against deep-pocket trustees when investments underperform. We are concerned that beneficiaries could allege breach of fiduciary duties if a trust bank did not actively seek to replace directors when a

company fails to meet its quarterly projections or some other similar news causes a company's stock to drop.

Conclusion

ABA and ACB appreciate the opportunity to offer our comments on the proposed rules regarding shareholder proxy access. If you have any questions concerning the issues raised in this letter, please do not hesitate to contact the undersigned.

Sincerely,



Sharon A. Haeger
Regulatory Counsel
America's Community Bankers
(202) 857-3186

Sarah A. Miller
General Counsel
ABA Securities Association
(202) 663-5325