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VIA E-MAIL

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549-9303

Re: File Nos. S7-16-07 and S7-17-07
Comments to Release Nos. 34-56160 and 34-56161
Director Nominations

Dear Ms. Morris:

We are pleased to submit this comment letter on the Securities and Exchange Commission's alternative proposals to amend the director nomination provisions of Rule 14a-8 under the Securities Exchange Act of 1934. We support the SEC's proposal in Release No. 34-56161 excluding from proxy statements any shareholder proposals for bylaw amendments relating to the director nomination process. Conversely, we oppose the SEC's shareholder access proposal in Release No. 34-56160, which would (1) require inclusion in the company's proxy materials of such proposed bylaw amendments made by a 5% or more shareholder and (2) if such a bylaw amendment were adopted, require companies to include in their proxy materials the director candidates nominated by shareholders.

The access proposal is designed to promote greater accountability of directors to shareholders. However, we believe that the proposal is based on the faulty premise that good corporate governance and shareholder democracy are one and the same. Typical corporate statutes, including Section 8.01 of the Revised Model Business Corporation Act, mandate that the business of the corporation be managed under the direction of its board of directors. Shareholders have the right to (1) vote for the election or removal of directors, (2) amend the bylaws, and (3) vote on extraordinary transactions such as charter amendments, mergers or liquidation, if and when proposed by the board of directors. However, corporate governance is not based on a representative democracy model.

Directors are fiduciaries, charged with exercising their oversight role in the best interests of the corporation and its shareholders. As a collective body, the board oversees management, including hiring and firing senior officers and approving their compensation. As part of its oversight role, the board also provides overall strategic direction, including input regarding long-range business strategy and approval of annual business plans. Consequently, well-functioning

boards tend to operate by consensus and to seek members who complement the backgrounds, experience and skills of existing directors, in light of the company's business needs. Directors are not interest group representatives elected to represent their respective constituencies.

The SEC's access proposal would facilitate bylaw amendments governing the director election process made in compliance with state law and the company's charter. These bylaw amendments, if adopted, could require companies to include in their own proxy materials candidates nominated by shareholders. By contrast, under the SEC's current proxy rules, shareholders must file and disseminate their own proxy materials in order to seek votes in favor of their own nominees. Under plurality voting, which is the statutory default in most states, those nominees receiving the highest number of votes in a proxy contest would be elected to the open positions. It is not difficult to envision a scenario in which the presentation of multiple candidates in the company's own proxy materials would result in the election of a disparate slate of directors by a variety of constituencies, including hedge funds and labor unions, each with its own agenda. Consider for example, a situation in which (A) the proxy materials present 5 candidates nominated by 5 different shareholder constituencies, together with the board's own slate of 9 directors, and (B) the 5 shareholder nominees and 4 of the board's nominees receive the most votes.

We only need to look to Congress to find examples of the gridlock that can result from this type of interest group democracy. Furthermore, recent history shows the perils that can arise from a dysfunctional board that does not operate by consensus. For this reason, commentators have suggested that when a board fails, "the board should be removed as a whole."[1]

We also note that director accountability to shareholders is being promoted through other methods less fraught with potential unintended consequences, including the voluntary adoption of different variants of majority voting for directors. In addition, the SEC's new rules regarding the electronic dissemination of proxy materials should make it less costly for shareholders to disseminate their own proxy materials.

For these reasons, we respectfully recommend against adoption of the proxy access proposal and for adoption of the companion proposal restricting bylaw amendments regarding the director nomination process.

[1] Leo E. Strine, Jr., "Toward a True Corporate Republic: A Traditionalist Response to Bebchuck's Solution for Improving Corporate America," 119 HARV. L. REV. 1759, 1776 (2006).

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We would be happy to discuss any questions that the staff may have regarding the above comments. Please call Linda Y. Kelso at (904) 359-8713, Jay O. Rothman at (414) 297-5644 or John K. Wilson at (414) 297-5642 if you have any questions.

Sincerely,

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