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November 16, 2007

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

Re: Disclosure rationale for eliminating shareholders' ability to file proposals on shareholder access to the proxy under Rule 14a-8 (File nos. S7-16-07 and S7-17-07)

Dear Ms. Morris,

The purpose of this letter is to more fully address a concern that has emerged in the debate over whether shareholders should be precluded from using Rule 14a-8 (the "Rule") to submit proposals seeking to establish a right of shareholder access to the company proxy statement. Specifically, the debate over this question has increasingly focused on the notion that shareholders should not be permitted to submit such proposals under the Rule as currently drafted because the Commission's other proxy rules dealing with disclosure required in a contested election would be circumvented.

As discussed more fully below, the current Rule empowers the Staff of the Division of Corporation Finance to exclude proposals that do not provide for complete disclosure, in compliance with the proxy rules, regarding both nominating shareholders and their nominees. Moreover, a much simpler amendment to the Rule than what has been proposed in the Commission's recent rulemaking proposals (Exchange Act Release Nos. 56160 and 56161; file nos. S7-16-07 and S7-17-07) would put to rest worries over disclosure while continuing to enable shareholders to communicate about this key director election reform.

The American Federation of State, County and Municipal Employees ("AFSCME") is the largest union in the AFL-CIO representing 1.4 million workers. AFSCME members participate in over 150 public pension systems whose assets total over $1 trillion. In addition, the AFSCME Employees Pension Plan (the "Plan") is a long-term shareholder that manages $850 million in assets for its participants, who are staff members of AFSCME. The funds in which AFSCME members and retirees are participants and beneficiaries provide patient, long-term capital to support sustainable value creation at public companies. These funds are sufficiently diversified that they essentially "own the market"; as a result, AFSCME is keenly interested in corporate governance practices that promote accountability and enhance company performance.

As you may be aware, the Plan has submitted a number of proxy access shareholder proposals over the past five years. A proposal submitted by the Plan to Citigroup for consideration at the 2003 annual meeting, which the Staff determined to be excludable under Rule 14a-8(i)(8) (the "Election Exclusion"), helped spur the Commission's 2003 rulemaking. After that rulemaking was shelved, the Plan returned to a company-by-company strategy, and litigated the AFSCME vs. AIG case after the Staff permitted AIG to exclude the Plan's proxy access proposal. Last season, the Plan co-sponsored a proxy access proposal at Hewlett-Packard which was supported by holders of 43% of shares voted.

At every turn, it has been of paramount concern to AFSCME and the Plan to ensure that shareholders not be deprived of important information regarding director nominees and the shareholders that support their candidacies. To that end, the proposals submitted by the Plan have all included several relevant requirements:

- The notice required to be sent by a nominating shareholder or group must include:
  - The information about the candidate required by Items 5(b) and 7 of Schedule 14A, which mandate disclosure of the identity of the soliciting person(s), methods and cost of solicitation, the terms of any contract for solicitation services, the terms of any settlement of a solicitation, and extensive information about the nominee's background, ownership of and transactions in company securities, legal proceedings, and relationships with the company.
  - The information about the nominating shareholder or group required by Item 5(b) of Schedule 14A, which mandates disclosure of the identity of the soliciting person(s), methods and cost of solicitation, the terms of any contract for solicitation services, the terms of any settlement of a solicitation, and information about the nominating shareholder or group's ownership of and transactions in company securities.
- In order to use the access procedure, the nominating shareholder or group must agree to assume all liability arising out of communications with shareholders using any means other than the company's proxy statement, including liability for violation of the Commission's anti-fraud rule.

The Plan submitted its proxy access proposals against the background that company proxy statements are themselves subject to the Commission's proxy rules, including the anti-fraud rule. The proposals provided that the company must establish a procedure for resolving disputes over whether the disclosure submitted by the nominating shareholder violates any of the Commission's proxy rules.

In that way, a company could refuse to include a nominee in the proxy statement if false, misleading or incomplete information was provided about the nominee or nominating shareholder.

Much has been made of the role of Rule 14a-12. Both the Commission's 1976 release on the Election Exclusion and some of the Staff determinations allowing exclusion of proxy access proposals refer to the fact that Rule 14a-12 (or its predecessor, Rule 14a-11) are applicable to election campaigns or contested director elections. But Rule 14a-12 does not itself mandate any substantive disclosure; instead, it governs filing mechanics and solicitations before a proxy statement is filed. The substantive disclosure requirements applicable to an election contest are imposed by Rule 14a-3(a), which prohibits solicitation unless a preliminary or definitive proxy statement containing the information required by Schedule 14A is provided. It is these Schedule 14A disclosure requirements which the Plan has incorporated into its proxy access proposals.

Not only do the proxy access proposals themselves require provision of information about a nominating shareholder and nominee equivalent to the information disclosed in connection with a proxy contest, but Rule 14a-8(i)(3) permits a company to exclude a proposal that "is contrary to any of the Commission's other proxy rules." Rule 14a-8(i)(3) would thus provide an independent basis for the Staff to allow exclusion of a proxy access proposal that did not comply with the disclosure requirements applicable to election contests.

Further, the disclosure concern could be addressed in a much more limited fashion than disallowing all proposals on the subject of proxy access. If the Commission believes that neither the requirements of the proxy access proposals nor the language of Rule 14a-8(i)(3) provides sufficient assurance that proxy access would not permit an "end run" around the Commission's disclosure requirements applicable to contested elections, the Commission could amend the Election Exclusion to allow exclusion of proxy access proposals that do not satisfy those Schedule 14A requirements. Doing so would allay the Commission's concerns about the adequacy of disclosure in a proxy access regime while preserving shareholders' rights under state law to alter the procedures by which directors are nominated and elected.

Finally, we would be remiss if we did not draw your attention to the fact that a U.S. public company, Comverse Technologies, has adopted a proxy access regime very similar to the one described in the Plan's proposals. Comverse's management-adopted bylaw does not provide for any additional disclosure, so it is only shareholder-proposed bylaws that are held to higher disclosure standards.

The fact that management can add an access bylaw that addresses the SEC's disclosure concerns but shareholders cannot is an incongruity that strengthens our belief that the Commission should revisit the proxy rules with the goal of ensuring clarity and full disclosure regardless of whether dissident shareholders use their own proxy statement or the company's to advance a director candidacy.

We appreciate the opportunity to express our views to the Commission on this important issue. If you have any questions or if we can be of further assistance, please do not hesitate to contact Richard Ferlauto, Director of Corporate Governance and Investment Policy, on (202) 429-1275.

Very truly yours,

GERALD W. McENTEE
International President

cc: Senator Christopher C. Dodd
Representative Barney Frank