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2 October 2007

Ms. Nancy M. Morris, Secretary
Securities & Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File Number S7-17-07

Dear Ms. Morris:

By a notice of proposed rulemaking entitled *Shareholder Proposals Relating to the Election of Directors*, Release No. 34-56161, 72 Fed. Reg. 43488 (3 August 2007) (the "Notice"), the Commission requested comments on a proposal to amend Rule 14a-8 (17 C.F.R. § 240.14a-8), which deals with the submission of shareholder resolutions at publicly traded companies. In response to that Notice, the Amalgamated Bank LongView Funds (the "LongView Funds" or the "Funds") submit the following comments.

The LongView Funds are a family of index funds with approximately $10 billion under management on behalf of pension fund clients. Over the past 15 years the LongView Funds have sought to add value to the Funds' holdings by pursuing a program to improve corporate governance at portfolio companies. The Funds have used various means of communicating with managements and directors of portfolio companies, and the Funds routinely submit shareholder resolutions under Rule 14a-8 as a means of having a dialogue with these firms.

The Funds view as one of the most important governance issues the accountability of directors to the shareholders who elect them. To that end, the Funds have sponsored and supported proposals to have all directors elected annually rather than in staggered "classes." The Funds have also sponsored and supported proposals to have directors elected by a majority of shareholder votes cast, rather than the default plurality vote system. The Funds have also paid close attention to "vote no" campaigns sponsored by other shareholders and have supported measures to reform

practices that come within a board's purview, such as designing compensation programs that match pay to performance.

The LongView Funds support the concept of "proxy access" as a means of promoting director accountability. By "proxy access," we mean proposals under which shareholders may nominate candidates for the board, and the names of those candidates would appear in the company's proxy materials, along with an opportunity to vote for or against those candidates. The LongView Funds filed comments generally supporting this concept when the Commission requested comments on a similar proposal in 2003, and the Funds continue to believe in that concept.

There may be times when corporate boards would be well served by adding a director or directors with a fresh perspective and no prior ties to management or incumbent directors. As a practical matter, the only way that shareholders can make that happen at present is by running one's own slate in a proxy contest. Proxy contests can be expensive and time-consuming, so much so that the shareholder sponsoring the slate might conclude that the only way to make the effort cost-effective is to seek control of the board, even if a more modest reform would be useful.

Proxy access thus provides a middle course through which shareholders can attempt to change the composition and operation of a board in a more measured fashion. As a result, shareholder proposals asking a company to adopt such a proxy access regime would seem a reasonable proposal for shareholders to debate and consider.

The Funds recognize that the Division of Corporation Finance (the "Division") has concluded in recent no-action letters that proposals asking a company to adopt a proxy access regime violation the "director election" exclusion in Rule 14a-8(i)(8). Although the Division's reasoning has shifted over the years, the current thinking is that such proposals should be omitted from the proxy. The concern has been expressed that such proposals might lead to contested director elections without an assurance that shareholders would receive the sort of disclosures that are normally required in independent director contests.

The U.S. Court of Appeals for the Second Circuit rejected the Division's narrow interpretation of the "director election" exclusion in *AFSCME Pension Plan v. American International Group*, 462 F.3d 121 (2d Cir. 2006). The Second Circuit concluded that this (i)(8) exclusion could be invoked to exclude proposals relating to specific elections for specific board seats, but not matters relating more generally to the election process. Indeed, over the years, the SEC and the Division have rejected company arguments that the (i)(8) exclusion permits the omission of proposals

dealing with board declassification, independent directors, splitting the positions of board chairman and chief executive officer, board diversity, stock ownership requirements for directors and a range of similar issues.

The Notice would seek to reinterpret the (i)(8) exclusion so as to forbid proposals asking a company to put in place a proxy access regime. The LongView Funds believe that such an approach should not be adopted for several reasons.

First, the discussion in the Notice of the various staff and Commission decisions fail to address the fact that there was a period throughout most of the 1990s in which the Division routinely denied no-action relief as to proxy access proposals. The Commission does not identify what experience (if any) during this period caused the Division to rethink this approach and to adopt a more restrictive and exclusionary approach.

Second, experience from earlier this year indicates that proxy access proposals are popular among shareholders. Three such proposals came to a vote in 2007. At two companies (Hewlett-Packard and UnitedHealth Group), the proposals received over 40% of the votes cast. At a third company (Cryo-Cell International), the shareholders adopted a proposal asking the company to adopt such a regime. A fourth company, whose former executives achieved some notoriety during the options backdating scandal (Comverse Technology), voluntarily adopted a proxy access regime without the matter coming to a vote.

The Funds therefore submit that concerns about shareholders submitting proxy access proposals is overblown. Should the Commission believe that proxy access proposals should be regulated directly, with certain disclosures to be mandated explicitly by regulation, that would be a matter for a separate rulemaking, such as the companion proceeding that is currently pending (Release No. 34-56160). However, the Funds do not see merit in enacting a flat ban on proxy access proposals, as the Notice proposes to do.

On a more technical matter, the Commission has requested comment on the proposal language by which the text of the (i)(8) exclusion would be amended. The Funds are concerned by the potential vagueness of the proposed phrase to exclude resolutions relating to the "procedure for such nomination or election of directors." As noted earlier, the Division has denied no-action relief with respect to a variety of proposals that arguably relate to the "procedure" for nominating directors, *e.g.*, proposals to nominate a slate of candidates so as to achieve a certain level of board independence. Similarly, the Division has denied no-action relief with respect to proposals asking the board of directors to nominate at least two candidates for each open seat. *General Electric Co.* (12 January 2001); *Bank of America Corp.* (16

February 2001); *SBC Communications Inc.* (31 January 2001); *Citicorp* (6 January 1994). The Commission does not address these proposals in its Notice and evinces no interest in overruling them. However, they could be affected by a rule change that purports to limit a shareholder's right to offer proposals relating to the "procedure" for nominating a director. The only issue that the Commission is addressing in this Notice is the type of proxy access proposal presented in the *AIG* case. Although the Funds disagree as to the need or desirability of any change in the current law, they suggest that if the Commission decides to move forward on this topic, any final rule should not inadvertently overrule existing precedents that are not expressly addressed in this rulemaking.

For these reasons, Amalgamated Bank LongView Funds respectfully urge the Commission not to overrule the *AIG* case and to permit the continued interpretation of Rule 14a-8 in accordance with that case.

Very truly yours,

Cornish F. Hitchcock