HARVARD UNIVERSITY
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August 13, 2009

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File No. S7-10-09

Dear Ms. Murphy:

We write to you to comment on the SEC's proposal to establish a new rule allowing shareholders to have their nominees for director included in company proxy materials.

We are members of the faculty of Harvard Business and / or Harvard Law School. As academics we all focus on various aspects of corporate governance and especially the functioning of boards of directors, and the relationships between the boards and their shareholders. Additionally a number of us are or have served on the boards of directors of public companies in the U.S. We write to you as individuals, not as representatives of our schools.

We support the broad intent of the SEC's proposed rule – to give shareholders a means to have more influence on who serves on the boards of the companies in which they have ownership and support an SEC rule facilitating access, along the general lines of what the SEC has proposed. The absence of a direct means for shareholders to influence the composition of the boards of the companies they own has been one reason for investors to rely on "the Wall Street Walk" when they are unhappy with their company's performance. Further the current lack of direct shareholder power in relation to boards and management has also contributed to the array of shareholder proposals, many of which contribute little to effective governance.

While we all support the broader goals of the proposed rule we do have some concerns about its form and specific provisions.

The 1% threshold for share owners of large companies is too low. It potentially allows for too many contests, some of which will distract boards from the real work of leading their companies. This is especially so since groups of shareholders would be able to band together to reach the threshold. Furthermore, we could envision a number of competing slates from different shareholder groups in the same contest. This we believe would be confusing to the broader shareholder base, and is likely to lead to chaotic elections. The proliferation of majority vote requirements and the elimination of broker voting of discretionary shares in uncontested elections already represent significant changes to the director election process. Therefore, we believe that the SEC should "start slow" with respect to shareholder access in order to avoid too much change, with possibly unanticipated negative interactions, all at once.

Specifically, the SEC should institute a higher threshold, applicable across-the-board for all public companies – somewhere in the range of 5-10%, with aggregation still possible. After the spring 2010 proxy season, the SEC should review the number and quality of candidates proposed, and adjust the threshold downward as necessary in order to ensure meaningful proxy access for subsequent proxy seasons.

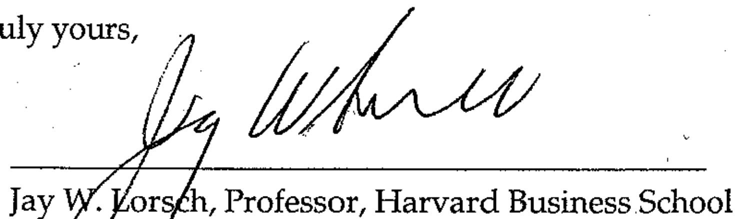
The goal is to bring more information, and if needed, new directors into the boardrooms, not to facilitate more election contests for its own sake. Moreover, any new rule creates the problem of error and unanticipated consequences. A higher, rather than a lower, initial threshold will uncover problems before they are widespread. Once everyone is comfortable with the basic operation of the rule, the minimum threshold could, if necessary, be adjusted downward.

We support the proposed rule's provisions which require investors to hold their shares for one year prior to the request for proxy action. Several of us also believe it would be wise to restrain any shareholder who uses the rule to agree from freely selling the stock, if he is successful, for a period after the election, perhaps one year. Alternatively, shareholders using the rule could be required to provide pre-sale notification to the public of an intent to sell securities during such a period. Failure to do so could result in a fine or other economic penalty, similar to the short-swing profit rules in Section 16 of the 1934 Act. This could assure that the new directors and the shareholders procuring their election are serious about the company's long-term future.

Finally, to reduce the "one-size-fits-all" aspect of the rule, we would permit any company subject to the new rule the ability to "opt out" of the rule upon a majority vote of outstanding shareholders. The opt-out could be complete, or partial (by raising or lowering the threshold amount, or the pre- or post-contest holding period, or otherwise). Since the new rule is designed to benefit shareholders, shareholders should be able to eliminate the costs of such a rule if they do not believe it benefits them. Perhaps the opt-out might be sunsetted, with a renewed shareholder vote after, say 10 years. Similarly, any company that clearly "opts out" of the new rule in its charter prior to going public should be able to do so. This is particularly important because an SEC rule would displace state-level experimentation. As such, an SEC rule should allow for local, company-by-company variation.

We hope you will consider these comments as you move forward in finalizing the proposed rule.

Very truly yours,



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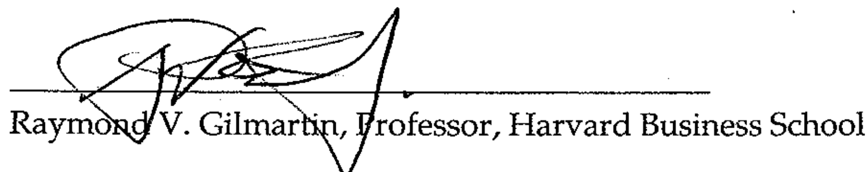

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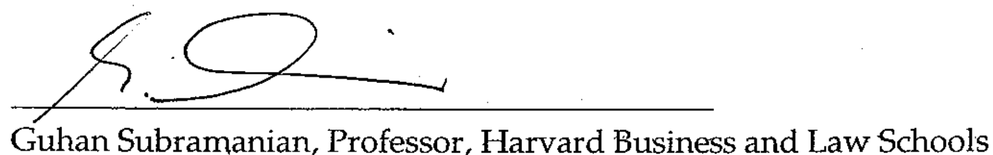

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