Business Roundtable℠

Testimony for the Record

of

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President, Business Roundtable

on

Shareholder Rights and Proxy Access

Before the U.S. Senate Committee on
Banking, Housing, and Urban Affairs

Wednesday, November 14, 2007

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Mr. Chairman and members of the Committee, thank you for inviting me here to share our views on the issue of proxy access. For the hearing record we are also including our comment letter to the SEC.

Business Roundtable has long been a strong supporter of corporate governance reforms. We supported Sarbanes Oxley, the enhanced listing standards of the exchanges, additional disclosures on executive compensation, and majority voting for directors.

Similarly, we remain committed to promoting the accountability and responsiveness of boards, enhancing transparency so investors can make informed decisions, and facilitating communication and understanding between companies and their shareholders.

As you know, the issue of proxy access has been debated over the years, and previous Commissions have struggled with both the realities of state laws that govern director elections, and a host of implementation issues.

There are numerous underlying issues that should be resolved before proxy access is considered, which include the role of proxy advisory firms, the impact of so called “borrowed voting”, and the reforms necessary to allow companies to communicate directly with all of their shareholders, rather than going through brokers and third parties.

The SEC is considering two proposed rules, whose issuance followed a lengthy process of testimony by experts from the legal, academic, corporate, and shareholder communities.

The heart of the issue involves how corporate director elections are governed and how a company proxy is used.

Director elections are governed by state law where the company is incorporated, and the proxy is a mechanism for shareholders to vote when not attending shareholder meetings. Shareholders *do* have the right to nominate directors, but *not* on the company proxy. This has been an important protection against shareholders having to pay for their own hostile takeover. The SEC has consistently recognized this and excluded such proposals.

Proponents of access want to allow individuals or groups with small holdings to place their candidate directly on the company proxy. Our biggest concern is that board members would be forced into a political system, and then concentrate on annual election campaigns to the detriment of their most important responsibility – protecting and enhancing the investment of all shareholders.

Imagine a proxy card with multiple candidates, seeking shareholder votes based upon conflicting recommendations. In order to win board elections, nominees would be forced to campaign, run ads, and even seek financing, paid for with shareholder money.

Individual shareholders would be confused by conflicting choices, and institutional investors would be lobbied for votes, determined behind the scenes by a select few fund managers and proxy advisory services.

In this day and age of hedge funds, foreign government investment in US corporations, and questions about our markets remaining competitive in the global economy, the last thing shareholders need is politics in the board room, with fractured boards openly arguing and resulting in diminished shareholder confidence.

We also believe such a process will discourage qualified, independent directors from serving, and undermine the successful model that has produced enormous shareholder returns.

The fact is that company boards and executives have transformed themselves, demanding greater accountability and exercising more oversight, as they should. Indeed, we have seen more governance changes in the past 5 years than during the previous 50.

Each year we survey our members on governance practices, and the results this year speak for themselves:

- 91% of our Boards are made up of at least 80 % Independent Directors.
- 72 % of our Boards meet in executive session at every meeting.
- 75 % of our CEOs serve on no more than 1 other Board.
- 84 % of our Boards have ***voluntarily*** adopted Majority Voting for Directors in just two years.

An interesting example of how boards have responded to shareholder pressure is that the mean tenure of a CEO of a Business Roundtable company is now down to four years. Whether or not this trend is in the best interests of shareholders remains to be seen. But clearly it shows that boards are more dominate than ever.

With Majority Voting, shareholders now have a true "yes" or "no" vote on board candidates, and have a meaningful voice in the director election process. Former SEC Commissioner Joseph Grundfest compares this to the “advice and consent” powers of the U.S. Senate. In a speech last week he said “Effective advice and consent mechanisms already exist in our own corporate backyards. Shareholders have the right to veto any candidate to serve on any board.”

Board members now regularly meet with shareholders, having the benefit of their views on everything from compensation, to mergers, to capital expenditures. Companies work to keep shareholders because it’s in their best interest to do so.

Given these reforms, the challenge we now face is guarding against further erosion of our competitiveness. Increasingly we see public companies going private, and new companies listing in foreign exchanges. Senator Schumer's commission identified this trend as a challenge facing our capital markets.

In our view, Proxy Access could contribute to this trend. Rules allowing virtually anyone to force by-law amendments regarding director elections would provide another reason for companies to go private or list elsewhere.

Given our belief that politics and divisiveness have no place in the boardroom, coupled with a strong record of meaningful reforms, we believe the proposal may produce the unintended consequence of eroding shareholder value.

Now more than ever, boards need to attract qualified directors who can work together to innovate, increase revenues and profits, and grow shareholder value.

Preserving the current balance between shareholders, boards, and management will allow corporate directors to continue to focus on what they are there to do: provide critical judgment and oversight, and help create long term value for all shareholders.

Thank you and I'd be happy to answer any questions.

Business Roundtable™

October 1, 2007

VIA E-MAIL

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

Re:Shareholder Proposals Relating to the Election of Directors – File Number S7-17-07, Shareholder Proposals – File Number S7-16-07

Dear Ms. Morris:

This letter is submitted on behalf of Business Roundtable, an association of chief executive officers of leading U.S. companies with over $4.5 trillion in annual revenues and more than ten million employees. Member companies comprise nearly a third of the total value of the U.S. stock market and represent nearly a third of all corporate income taxes paid to the federal government. Roundtable companies give more than $7 billion a year in combined charitable contributions, representing nearly 60 percent of total corporate giving. They are technology innovation leaders, with $86 billion in annual research and development spending – nearly half of the total private R&D spending in the U.S.

We appreciate this opportunity to provide our views in response to: (1) the Commission's proposal to revise the "director election" exclusion to reflect the Commission's longstanding interpretative position; (2) the Commission's alternative proposal on "access bylaws" and its proposal on electronic shareholder forums; and (3) the Commission's solicitation of comment on issues related to non-binding shareholder proposals. Due to the importance we place on the issues addressed in the Commission's two releases and the number of issues, we are providing our general comments below and submitting more detailed comments in an enclosure with this letter.

Business Roundtable has long been a strong supporter of good corporate governance. We have issued numerous statements addressing corporate governance, including *The Nominating Process and Corporate Governance Committees: Principles and Commentary*, published in April 2004; *Guidelines for Shareholder-Director Communications*, from May 2005; *Principles of Corporate Governance*, released in November 2005; and *Executive Compensation: Principles and Commentary*, from January 2007. We strongly supported enactment of the Sarbanes-Oxley Act of 2002, implementation of the

Commission's rules related to the Sarbanes-Oxley Act and revisions to the corporate governance listing standards of the New York Stock Exchange and The NASDAQ Stock Market. We share the Commission's belief that corporate boards and management must hold themselves to high standards of corporate governance.

In light of the commitment of Business Roundtable and our members to high standards of corporate governance, we have spent significant time reflecting on the Commission's proposals. Identifying what would best accomplish the paramount goal of preserving and enhancing the director election and shareholder proposal processes in a manner designed to benefit all of a company's shareholders. The processes that we support reinforce core principles that Business Roundtable strongly advocates, including:

- promoting the accountability and responsiveness of boards of directors;
- enhancing transparency to enable shareholders to make informed voting and investment decisions;
- facilitating communications between companies and their shareholders; and
- creating certainty and predictability for companies and their shareholders.

Consistent with these principles, Business Roundtable believes that:

First, the Commission is correct in issuing its interpretation and proposing rule amendments to clarify its longstanding position that company proxy statements are not the appropriate medium for shareholders to nominate directors. This clarification will preserve a carefully constructed regulatory framework designed to promote full and accurate disclosure. The key to this framework is that shareholders seeking to nominate their own directors must do so in their own (rather than the company's) proxy materials, subject to a regulatory scheme governing contested proxy solicitations. In this way, all of a company's shareholders will have an opportunity to make informed decisions in voting for directors in contested situations. In light of the Commission's interpretation, the staff should once again grant no-action relief to companies allowing them to exclude access bylaw proposals under Rule 14a-8(i)(8) even absent further Commission action. Doing so would be consistent with the Second Circuit's decision in *AFSCME v. AIG* and would avoid the disruption and expense of litigation by companies and their shareholders.

Second, allowing access bylaw proposals would have a number of harmful effects. It could lead to the election of "special interest directors" who will disrupt boardroom dynamics and harm the board's decision-making process. The end result will be to jeopardize long-term shareholder value by compromising the

board's ability to act in the long-term best interests of the company and all shareholders. In addition, permitting access bylaws could turn every director election into a contest and discourage qualified, independent directors from serving on boards. It would also increase the costs of director elections and shift the costs of proposing nominees from particular shareholders to companies and ultimately, to all shareholders.

Third, allowing access bylaw proposals is unnecessary given the sweeping changes in the corporate governance landscape that have occurred in recent years. During this time, boards of directors have become more active and independent. For example, our membership figures show that 90 percent of Business Roundtable companies have boards that are at least 80 percent independent. At 71 percent of Business Roundtable companies, the board meets in executive session at every meeting.

Changes in the governance landscape have also transformed the director election process and will continue to do so. The rights of shareholders to elect directors have strengthened. For example, as of August 2007, over 63 percent of S&P 500 companies had provided for a form of majority voting in director elections. Among U.S. publicly traded Business Roundtable companies, the proportion of companies is even higher, at 82 percent as of September 2007, compared to 22 percent as of March 2006. This dramatic increase in the prevalence of majority voting has taken place in the short space of less than two years. Moreover, shareholders have the ability to recommend director candidates to a company's nominating/corporate governance committee, and shareholders have benefited from increased transparency about the director nominations process. Robust communication procedures have enabled shareholders to engage in dialogue with boards about matters related to director candidates and the director election process generally. In addition, shareholders have always had the ability to undertake their own solicitation of other shareholders to elect directors. The Commission's recently adopted "e-proxy" rules will substantially reduce the costs of such an undertaking. Thus, a fundamental shift in the Commission's longstanding position on proxy access is particularly inappropriate and unnecessary at this time given all of these changes.

Fourth, the Commission's proposals to facilitate the use of electronic shareholder forums are a welcome continuation of recent corporate governance and disclosure initiatives that have improved communication between shareholders and boards. Business Roundtable believes that the Commission's proposals strike the appropriate balance by providing the flexibility necessary to create and maintain electronic shareholder forums while limiting liability that could discourage their use.

Fifth, in order to avoid what some have called the "tyranny of the 100 share shareholder," the Commission should toughen the requirements on including non-binding shareholder proposals in company proxy statements. Today,

companies and their shareholders, and the Commission and its staff, spend substantial time, effort and other resources on proposals that are not of widespread interest to a company's shareholders. Proposals that cover topics the company has already addressed or that have little to do with matters of economic significance to shareholders and the company. We have included specific recommendations for changes to the current rules in our detailed comments. These changes are appropriate given the recent developments cited by the Commission, including increased opportunities for dialogue and the Commission's proposals on electronic shareholder forums, which have significantly enhanced, and will continue to enhance, opportunities for collaborative discussion among shareholders, boards and management.

In summary, Business Roundtable believes that the Commission can best preserve and enhance the director election and shareholder proposal processes for the benefit of all shareholders by maintaining the existing framework for director nominations, adopting its proposal on electronic shareholder forums and amending its rules to reduce the time and resources spent on non-binding shareholder proposals. Taken together, these actions will benefit companies and all their shareholders.

Thank you for considering our views on this subject. We would be happy to discuss our comments or any other matters that you believe would be helpful.

Sincerely,

Anne M. Mulcahy
Chairman & CEO, Xerox Corporation
Chairman, Business Roundtable Corporate Governance Task Force

Enclosures

cc: Hon. Christopher Cox, Chairman
Hon. Paul S. Atkins, Commissioner
Hon. Annette L. Nazareth, Commissioner
Hon. Kathleen L. Casey, Commissioner
Mr. John W. White, Director, Division of Corporation Finance
Mr. Brian G. Cartwright, General Counsel

Detailed Comments
of
Business Roundtable,
Corporate Governance Task Force

1. The "director election exclusion" should be revised in a manner consistent with the Commission's long-standing interpretive position.

Business Roundtable strongly supports the Commission's interpretation and proposal to revise the "director election exclusion" in Rule 14a-8(i)(8) under the Securities Exchange Act of 1934[1] in a manner consistent with the Commission's long-standing interpretation of the rule. We believe that this interpretation and the proposed revisions are necessary and appropriate in light of the investor protection mandate embodied in the Commission's proxy rules. While the Commission's interpretation addresses the uncertainty created by *AFSCME v. AIG*,[2] we believe that revising the rule will provide additional clarity about its scope and meaning.

As noted in the Interpretive Release, the Commission's proxy rules contain a number of disclosure requirements that apply specifically to contested proxy solicitations for the election of directors. For example, the rules mandate disclosure about the identity of the parties soliciting proxies in a contested election, the methods and costs of solicitation, and, for each soliciting party and director nominee, information about any substantial interest they have in the solicitation, their holdings and transactions in company securities, any related person transactions, and any arrangements involving future employment and transactions with the company. The Commission's requirements for contested solicitations serve the fundamental goal of providing shareholders with full and accurate disclosure so they have an opportunity to make informed decisions in voting

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[1] *See Shareholder Proposals Relating to the Election of Directors*, Exchange Act Release No. 56161 (July 27, 2007) (Proposing Release) (hereinafter, the "Interpretive Release").

[2] *American Fed'n of State, County & Mun. Employees, Employees Pension Plan v. American Int'l Group, Inc.*, 462 F.3d 121 (2d Cir. 2006).

for directors. The requirements also promote accountability, and avoid confusion, by mandating that contestants provide the relevant disclosure in their own proxy materials.

The director election exclusion is an essential element of a carefully constructed regulatory framework intended to further the goal of full and accurate disclosure. As discussed in the Interpretive Release, the Commission and its staff historically have permitted companies to exclude from their proxy materials any shareholder proposal that may result in a contested election.[3] This includes any proposal that would set up a process for shareholders to conduct an election contest in the future, such as an access bylaw. Interpreting the exclusion otherwise would allow shareholders to place their nominees in a company's proxy materials, creating a contested election without a separate proxy solicitation and the attendant disclosures mandated by Commission rules governing contested solicitations.

In view of the Commission's adoption in the Interpretative Release of the interpretation that "a proposal may be excluded under Rule 14a-8(i)(8) if it would result in an immediate election contest (e.g., by making or opposing a director nomination for a particular meeting) or would set up a process for shareholders to conduct an election contest in the future by requiring the company to include shareholders' director nominees in the company's proxy materials for subsequent meetings," its staff should once again grant no-action relief to companies allowing them to exclude access bylaw proposals under Rule 14a-8(i)(8).[4] Doing so is consistent with the Second Circuit's decision in *AFSCME v. AIG*. In that decision, the Court requested that the Commission explain its interpretation of the rule, and the Commission has now done so.

In light of the Commission's interpretation of Rule 14a-8(i)(8) contained in the Interpretive Release, Business Roundtable believes it also is appropriate for the

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[3] *See also* John C. Coffee, Columbia Law School, Transcript of Roundtable on the Federal Proxy Rules and State Corporation Law, May 7, 2007 at 46 ("May 7th Transcript") ("It is Federal law and Federal law for 50 years that says you cannot use the proxy statement to nominate directors . . . .").

[4] *See* Interpretative Release at 18.

Commission to amend the rule to reflect this interpretation. As the Commission observes in the Interpretive Release, the *AFSCME v. AIG* decision has resulted in "uncertainty and confusion" about the appropriate application of the director election exclusion. While the Commission's interpretation eliminates some of this confusion, amending the rule would provide additional guidance to shareholders and companies as well as the Commission staff. With a clearer rule, shareholders and companies will have a better understanding of the types of shareholder proposals that are a proper subject for inclusion in company proxy materials, and the Commission staff will have additional guidance when responding to no-action requests. Greater clarity about the parameters of the exclusion will, in turn, help to reduce inefficiencies and unnecessary costs, as well as the unfortunate prospect of future litigation.[5]

The Commission's proposed change to Rule 14a-8(i)(8) brings additional clarity to the rule, but greater specificity in the rule or an instruction to the rule about the scope of the director election exclusion is warranted. The Interpretive Release states that, if Rule 14a-8(i)(8) is amended, the Commission "would indicate clearly that the term 'procedures' referenced in the election exclusion relates to procedures that would result in a contested election, either in the year in which the proposal is submitted or in subsequent years, consistent with the Commission's interpretation of the exclusion." Business Roundtable agrees with this clarification of the scope of Rule 14a-8(i)(8). We also support the Commission's suggestion to provide further clarification through an illustrative list of some of the specific circumstances in which shareholder proposals may result in an election contest. In order to do so, we recommend defining the term "procedures" in the rule or in an instruction to the rule or at least including the list of circumstances that may result in an election contest in an instruction. To preserve flexibility in interpreting and applying the rule, any such list should be illustrative only.

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[5] *See Reliant Energy, Inc. v. Seneca Capital LP*, 4:07-cv-00376 (S.D. Tex. filed January 29, 2007, dismissed February 27, 2007) (seeking declaratory relief that an access bylaw proposal was excludable under Rule 14a-8(i)(8) because the Second Circuit's ruling in *AFSCME v. AIG* was not applicable to it).

2. The Commission should not adopt rule changes that facilitate the proposal of "access bylaws" as such changes would have a number of harmful effects and are unnecessary.

Business Roundtable recognizes that the right to vote in the election of directors is one of the most significant rights of shareholders. We support an effective and meaningful voice for shareholders in the director election process. However, Business Roundtable does not believe that amending the Commission's rules to facilitate the proposal of "access bylaws" allowing shareholders to place their nominees in company proxy materials is the appropriate way to achieve this goal.[6] As discussed in more detail below, there are significant, negative consequences to permitting widespread shareholder access to company proxy materials to nominate directors. Moreover, such proxy access is unnecessary in light of the sweeping changes in the corporate governance landscape that have occurred in the past several years and that remain ongoing at this time.

As an initial matter, we note the statements in the Shareholder Proposal Release that the Commission "has sought to use its authority" to regulate disclosure and mechanics related to the proxy process "in a manner that does not conflict with the primary role of the states in establishing corporate governance rights." Business Roundtable believes that any Commission rulemaking allowing shareholders to nominate directors in company proxy materials would represent a sea change in corporate governance practice and would inject the Commission into an area traditionally reserved to state law. In this regard, the practical impact of the Commission's "bylaw access" proposed rule, if adopted, would be fundamentally *inconsistent* with the Commission's stated objective of "ensur[ing] that any new rule is consistent with the principle that the federal proxy rules should facilitate shareholders' exercise of state law rights, and not alter those rights." Due to the overwhelming policy and practical factors that weigh against adopting the proposal, we do not at this time address the legal question of whether adopting the proposal would exceed the Commission's rulemaking authority.

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[6] *See Shareholder Proposals*, Exchange Act Release No. 56160 (July 27, 2007) (Proposing Release) (hereinafter, the "Shareholder Proposal Release").

A. <u>Negative consequences of widespread access to company proxy materials</u>.

As noted above, there are a number of significant, negative consequences to permitting widespread shareholder access to company proxy materials to nominate directors. First, permitting proxy access could turn every director election into a proxy contest. This would result in divisive, contested elections and the need to expend significant corporate resources in support of board-nominated candidates. The prospect of an annual contest in connection with a company's director elections also could discourage prospective directors from serving on corporate boards.

Second, permitting shareholders direct access to company proxy materials could lead to the election of "special interest directors" who represent the interests of the shareholders nominating them, not the interests of all shareholders or the company as a whole. The Commission acknowledges in the Shareholder Proposal Release, "electing a shareholder nominee to the board could have a disruptive effect on boardroom dynamics." Business Roundtable believes the potential for disruption is particularly great in the case of directors who may be inclined to use their positions to serve particular agendas or constituencies.

Third, permitting shareholders direct access to company proxy materials is inconsistent with, and would undermine, recent initiatives that have strengthened the role and independence of nominating/governance committees, and indeed the board as a whole. In this regard, as of September 2007, 90% of Business Roundtable companies had boards that were at least 80% independent, according to Business Roundtable's 2007 Corporate Governance Survey. Moreover, under the New York Stock Exchange ("NYSE") corporate governance listing standards, companies must have a nominating/governance committee, made up entirely of independent directors, that is responsible for identifying individuals qualified to become board members, consistent with criteria approved by the board. This is a core function of the nominating/governance committee, and best practices suggest that this committee should lead the director nominations process. In view of its role, a company's nominating/governance committee is best positioned to determine the skills and qualities desirable in new directors in order to maximize the board's effectiveness.

Fourth, in the absence of nominating/governance committee involvement, direct shareholder access to company proxy materials may result in the nomination and election of director candidates who will cause a company to violate federal law; Commission, NYSE or The NASDAQ Stock Market requirements; or provisions in the company's governance documents. For example, a candidate could be elected in violation of the Clayton Antitrust Act, which generally prohibits simultaneous service as a director or officer of competing companies. Similarly, under the NYSE listing standards, boards must have a majority of independent directors, a sufficient number of independent directors to serve on their audit, compensation and nominating/governance committees, and directors with the necessary financial experience for a three-member audit committee. In addition, many boards have adopted specific criteria that directors must satisfy in order to be considered for service on the boards. In this regard, as of 2006, nominating/governance committees at 97% of Business Roundtable companies had established qualifications or criteria for directors, according to our 2006 Corporate Governance Survey.

Although the Commission's proposals would require shareholders to provide information about the independence and other qualifications of their nominees, under the NYSE listing standards, the board must make an affirmative finding that a director is independent. Moreover, the nominating/governance committee and the board are best situated to determine whether a candidate meets the board's membership criteria. Direct shareholder access to company proxy materials would hamper the ability of the nominating/governance committee and the board to perform one of its core functions—nominating directors—and may result in the nomination and election of director candidates who violate the law, are not independent or do not meet applicable board membership criteria.

Fifth, Business Roundtable does not believe that the interests of the vast majority of a company's shareholders would be well served by allowing some shareholders to propose director nominees using the company's own proxy materials. Instead, the Commission's proposal would shift the costs of proposing nominees from particular shareholders to the company and ultimately, to all of its shareholders. In this regard, we

believe that the Commission's proposal to revise the director election exclusion in Rule 14a-8(i)(8) (discussed above) will better preserve and enhance the governance practices of companies for the benefit of all their shareholders. Moreover, if a company's board of directors determines that adopting an access bylaw is not in the best interests of the company and all its shareholders, the company will need to spend time and resources in presenting its views to shareholders before they vote on a bylaw access proposal. As the Commission recognizes in the Shareholder Proposal Release, "[t]he company and the board may spend more time on shareholder relations instead of the business of the company." We do not believe that this is a desirable outcome or an appropriate use of a company's resources.

Finally, even though shareholders would furnish "[t]he bulk of the additional disclosure" required under the Commission's proposal, if the proposal is adopted, it will increase the costs of preparing and disseminating company proxy materials, as the Commission acknowledges in the Shareholder Proposal Release. Among other things, companies will be forced to expend substantial time and resources reviewing information that shareholders provide about their nominees, conducting any necessary follow-up with shareholders, and incorporating the information into the proxy statement. In addition, the Commission staff may find itself in the position of having to resolve disputes between companies and shareholders about wording and content, a situation about which the staff has previously expressed concern in the shareholder proposal area.

B. <u>Absence of need for widespread access to company proxy materials</u>.

Business Roundtable also believes that giving shareholders direct access to company proxy materials to nominate directors is unnecessary for a number of reasons.

First, existing proxy rules already permit meaningful shareholder involvement in the election of directors. Shareholders always may undertake their own solicitation of other shareholders to elect one or more directors, and shareholders with significant stock holdings certainly are in the position to finance these solicitations. Moreover, as discussed below, the Commission's recent adoption of its "e-proxy" initiative will substantially reduce the cost of independent solicitations.

Second, there have been more changes in corporate governance and securities regulation over the past five years than in the previous two decades. These changes have come about through a combination of sweeping reforms enacted by Congress (in the Sarbanes-Oxley Act of 2002), the Commission and the securities markets, and through voluntary action by companies to enhance their corporate governance practices. Collectively, these sweeping changes obviate the need for shareholder access to company proxy materials. Moreover, the governance landscape embodies a delicate balance that has been struck among a host of interrelated requirements and practices—a balance that would be upset through the introduction of a fundamental shift in Commission policy to allow access bylaw proposals.

Survey data from Business Roundtable member companies demonstrate the positive changes in corporate governance over the past five years. Specifically, according to our 2007 Corporate Governance Survey, as of September 2007:

- 90% of companies have boards that are at least 80% independent;
- at 71% of companies, the board meets in executive session at every regular board meeting;
- 97% of audit committees, and 92% of compensation committees, meet in executive session;
- 91% of companies have an independent chairman or an independent lead or presiding director;
- 82% of companies have addressed majority voting in director elections (as discussed below); and
- at almost 40% of companies, one or more board members met with shareholders during the past year (as discussed below).

Corporate governance changes that have transformed the director election process specifically, and will continue to do so, include:

1. *Majority voting*. In 2002-03, shareholder activists began suggesting that companies replace plurality voting in director elections with majority voting. Many companies viewed such a change favorably, and, as of August 2007, over 63% of S&P 500 companies had addressed majority voting in director elections.[7] Among U.S. publicly traded Business Roundtable companies, 82% had addressed majority voting as of September 2007, compared to 22% as of March 2006, a span of less than two years. This trend is likely to continue given recent amendments to Delaware law and the Model Business Corporation Act, as well as other states' corporation laws.[8]

2. *"E-proxy."* The Commission's new "electronic proxy" rules will permit companies and others soliciting proxies from shareholders to deliver proxy materials electronically. "E-proxy" is expected to greatly reduce the costs of distributing proxy materials. This rule change, and the technological advances that facilitated it, will greatly reduce the costs to shareholders of nominating their own director candidates in a traditional proxy contest.

3. *Director nomination procedures*. Shareholders currently have the ability to recommend candidates for the board of directors, and recent years have seen enhancements in disclosure about this process. In 2003, the Commission adopted rules requiring disclosure about companies' nominating/governance committee procedures for shareholders to recommend director candidates. As of 2006, 93% of Business Roundtable companies reported that their nominating/governance committees consider shareholder recommendations for board candidates, and 83% had a process for communicating with and responding to these recommendations, according to Business Roundtable's 2006 Corporate Governance Survey. Results of our 2007 survey indicate

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[7] *See* Joseph A. Grundfest, Stanford Law School, May 7th Transcript at 201 (noting the prevalence of majority voting among S&P 500 companies and stating that majority voting is acting "very powerfully . . . to increase shareholder influence.").

[8] *See, e.g.*, H.B. 134, 127th Gen. Assem. Reg. Sess. (Ohio 2007) (enacted); H.B. 271, 2007 Leg., 57th Sess. (Utah 2007) (enacted); Substitute H.B. 1041, 2007 Leg., 60th Sess. (Wash. 2007) (enacted).

that nominating/governance committees at 36% of Business Roundtable companies received shareholder recommendations for board nominees in the past year.

4. *Enhanced board-shareholder communication.* Many companies also currently provide mechanisms for shareholders to communicate with the board about a range of matters, including those related to director candidates and the director election process generally. In 2003, the Commission adopted rules requiring enhanced disclosure about companies' procedures for shareholders to communicate with the board. In addition, NYSE-listed companies are required to have publicized mechanisms for interested parties, including shareholders, to make their concerns known to the company's non-management directors. As of 2006, 91% of Business Roundtable companies had procedures for shareholders to communicate with directors, according to our 2006 Corporate Governance Survey. At almost 40% of Business Roundtable companies, one or more board members met with shareholders during the past year, according to our 2007 survey. In addition, as the discussion below concerning electronic shareholder forums illustrates, advances in technology are providing additional mechanisms for board-shareholder communications.

As the discussion above indicates, sweeping changes have taken place in the corporate governance landscape over the past five years, and these changes remain ongoing. Accordingly, a sea change in the Commission's longstanding position to facilitate access bylaw proposals is unnecessary and inappropriate at this time.

3. The Commission should adopt its proposals on electronic shareholder forums to facilitate communication among shareholders and to promote continued dialogue between companies and their shareholders.

Business Roundtable supports the Commission's goal of promoting the use of technology to facilitate communication among shareholders and between companies and shareholders. The Commission's proposed rules seek to further this goal by removing "any unnecessary real and perceived impediments" to electronic shareholder forums. Specifically, the proposed rules clarify that companies and shareholders are entitled to establish and maintain electronic shareholder forums and that they will not be liable for

any information provided by another person to the forum as a result of simply establishing, maintaining or operating the forum. In addition, the proposed rules seek to further encourage development of these shareholder forums by exempting from the proxy rules those solicitations on an electronic shareholder forum that do not seek to act as proxy for a shareholder or request a form of proxy from shareholders, and that occur more than 60 days prior to an annual or special meeting.

Business Roundtable believes that the proposed rules provide the flexibility necessary to allow companies and shareholders to establish and maintain electronic shareholder forums. A more prescriptive approach is not advised, as it would unnecessarily constrain that desired flexibility and inhibit innovation and use of new technology. In this regard, several companies already are experimenting with electronic shareholder communications. For example, prior to its 2007 annual meeting, AMERCO created a message board on its website to encourage shareholder communications regarding the upcoming meeting. In the invitation to the 2007 annual meeting, AMERCO's chairman urged shareholders to visit the forum in order to post and exchange thoughts regarding the AMERCO proxy solicitation. Similarly, in connection with its 2007 annual meeting, Exxon Mobil Corporation created an on-line forum to provide its shareholders with a place to ask questions relating to the proxy materials for the 2007 annual meeting.

We also support the Commission's proposal to limit liability for the sponsors of these forums, as it is necessary and appropriate to allay concerns that might hinder the development of the forums. Likewise, the proxy exemption for certain communications within the electronic shareholder forum is necessary to encourage the use of these forums. Business Roundtable agrees with the Commission that it is necessary to limit the use of such forums in the 60-day period prior to a shareholders' meeting (or more than two days after the announcement of a meeting) in order to protect shareholders from unregulated solicitations. We suggest that the Commission prohibit all new postings during the relevant period and require notification on the forum of the upcoming meeting and the proxy statement. In order to enforce this requirement, the final rule should

provide that the protection from liability does not apply to any posts during the relevant period.

These proposals are a welcome continuation of the reforms to the NYSE corporate governance listing standards and the Commission's proxy disclosure rules that have been adopted in the past several years to facilitate communication between shareholders and directors. Business Roundtable has supported these reforms and issued its own *Guidelines for Shareholder-Director Communications*, which support effective procedures for shareholders to communicate with the board. Many of our members currently provide email addresses for board members and committee chairs and regularly respond to shareholder communications. Shareholder communication innovations have not been limited to electronic shareholder forums. Recently, for example, Pfizer Inc. announced that its board will hold a meeting with its largest institutional investors to discuss its corporate governance polices and practices. Other companies' officers and directors are using blogs to enhance communication with interested parties including shareholders. This increased dialogue benefits companies and shareholders alike.

Business Roundtable therefore supports the Commission's proposed rules, which we believe will further the development of electronic shareholder forums and other innovations to facilitate shareholder communications. At the same time, we urge the Commission to address some of the broader shareholder communication issues that were raised at its recent proxy process roundtables and in the rulemaking petition that Business Roundtable filed with the Commission in April 2004 requesting rulemaking concerning shareholder communications. We remain convinced that advances in technology can do much to facilitate communication between companies and their shareholders whose securities are held in street and nominee name. Other participants at the SEC's roundtables expressed similar views concerning the need for the Commission to review the mechanics of the proxy process.[9]

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[9] *See, e.g.*, Lydia I. Beebe, Chevron Corporation, Transcript of Roundtable on Proxy Voting Mechanics, May 24, 2007 at 16-18 ("May 24th Transcript"); Charles V. Rossi, Computershare Inc., May 24th Transcript at 117.

4. The Commission should reexamine certain provisions of Rule 14a-8 for consistency with state law and to reduce the time and resources that companies and the Commission staff expend on shareholder proposals.

Business Roundtable supports the Commission's solicitation of comment on issues relating to the inclusion of non-binding shareholder proposals in company proxy materials under Rule 14a-8. Our member companies received over 361[10] shareholder proposals for consideration at their 2007 annual meetings. These proposals require substantial management and board time and effort, as well as other costs to the company and its shareholders, and, of course, the resources of the Commission and its staff.

A. Eligibility threshold.

The Commission has solicited comment on whether it should amend Rule 14a-8 to revise the existing ownership threshold for submitting shareholder proposals. Under current Commission rules, a shareholder is eligible to submit a Rule 14a-8 proposal if the shareholder has continuously held at least $2,000 in market value, or 1%, of the company's shares for at least one year. The Commission has not adjusted this threshold since 1998, when it raised the threshold from $1,000 to the current $2,000 eligibility threshold. Even at that time, many commentators expressed the view that this small increase would do little to reduce the significant time and resources expended by companies and the Commission in dealing with Rule 14a-8 shareholder proposals. Nearly ten years later, this increase has been rendered relatively meaningless given increased investments by shareholders.[11]

As several participants in the Commission's recent proxy process roundtables noted, this low eligibility threshold subjects companies to the "tyranny of the 100 share

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[10] Based on data from Institutional Shareholder Services.

[11] For example, the median value of stock owned by U.S. families with stock holdings increased 35% between 1995 and 2004. *2004 Survey of Consumer Finances*, Board of Governors of the Federal Reserve System (February 28, 2006).

shareholder."[12] Essentially, a shareholder holding a *de minimis* investment has the ability to use the company's resources (and by extension, the resources of all the company's shareholders) to put forth his or her agenda. Every year, companies spend significant time and financial resources responding to shareholder proposals, negotiating with proponents, and deciding whether to adopt proposals, include them in the proxy statement or attempt to exclude them by submitting no-action requests to the Commission. In turn, the Commission staff must respond in a short time frame to each no-action request that it receives from a company. Consequently, the time and expense associated with Rule 14a-8 proposals necessitates a significant increase from the current $2,000 eligibility threshold in order to justify the burden and cost on companies, shareholders and the Commission. Thus, we urge the Commission to increase the eligibility threshold significantly.

B. Resubmission thresholds.

The Commission has requested comment on whether it should amend Rule 14a-8 to alter the resubmission thresholds for proposals that deal with substantially the same subject matter as another proposal that previously has been included in the company's proxy materials. Rule 14a-8(i)(12) currently permits the exclusion of a shareholder proposal concerning substantially the same subject matter as a prior proposal included in the company's proxy materials within the preceding five calendar years where the proposal received: (1) less than 3% of votes cast, if proposed once during such period; (2) less than 6% of votes cast, if proposed twice during such period; or (3) less than 10% of votes cast if proposed three or more times during such period. These resubmission thresholds have not been changed since 1954.[13]

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[12] *See, e.g.*, John C. Coffee, Columbia Law School, May 7th Transcript at 44-45; William J. Mostyn III, Deputy General Counsel and Corporate Secretary, Bank of America Corporation, Transcript of Roundtable on Proposals of Shareholders, May 25, 2007 at 32 ("May 25th Transcript").

[13] The 3% threshold was added in 1948, and the 6% and 10% thresholds were added in 1954. *See Adoption of Amendments to Proxy Rules*, Exchange Act Release No. 4185, § III (November 5, 1948); *Adoption of Amendments to Proxy Rules*, Exchange Act Release No. 4979, § II (January 6, 1954). We note that the thresholds were changed

The average votes cast for shareholder proposals has increased significantly. For example, in 1997, the average vote on all shareholder proposals was 15.1% of votes cast.[14] In contrast, the average vote on all shareholder proposals in 2007 (through early September) was 32%.[15] Nevertheless, while support for non-binding shareholder proposals has increased in recent years, many of these proposals continue to receive a relatively low percentage of votes cast. Our members' experience with the shareholder proposal process indicates that Rule 14a-8(i)(12) fails to prevent repeated shareholder votes on shareholder proposals despite the relatively low support for such proposals. We have attached as Appendix A a chart demonstrating how the resubmission thresholds fail to prevent repeat shareholder votes on shareholder proposals that receive relatively low votes year after year. As the chart indicates, as a result of the low resubmission thresholds currently in place, companies are forced to expend great efforts dealing with issues that shareholders clearly do not support. Consequently, the Commission should amend Rule 14a-8(i)(12) to:

- increase the minimum votes a proposal must receive in order to be resubmitted (*e.g.*, a proposal may be excluded if it receives less than 10% of votes cast the first time it is voted on, less than 25% of votes cast the second time it is voted on and less than 40% of votes cast the third time it is voted on); and

- allow the exclusion of a shareholder proposal for a certain number of years if shareholders repeatedly reject it (*e.g.*, a shareholder proposal that is voted on three

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to 5%, 8% and 10%, respectively, for 1984 and most of 1985 before the current thresholds were reinstated due to litigation regarding rulemaking procedures. *See Reinstatement of Rule*, Exchange Act Release No. 22625 (November 14, 1985); *United Church Bd. for World Ministries v. SEC*, 617 F.Supp. 837 (D.C.D.C. 1985).

[14] Cynthia J. Campbell, Stuart L. Gillan and Cathy M. Niden, *Current Perspectives on Shareholder Proposals: Lessons from the 1997 Proxy Season*, Financial Management (Financial Management Association), Spring 1999. The average vote on corporate governance proposals was 23.6% of votes cast, with votes ranging from 0.8% to 74.5%. *Id.* The average vote on social policy proposals was 6.6% of votes cast, with votes ranging from 1.2% to 19.2%. *Id.*

[15] Based on data from Institutional Shareholder Services.

times but not approved by a majority of the votes cast should be excludable for five years thereafter).

C. <u>"Ordinary business" exclusion</u>.

The Commission has requested comment on whether changes or clarifications should be made to Rule 14a-8(i)(7), the ordinary business exclusion, and its application with respect to shareholder proposals that involve significant social policy issues. Business Roundtable believes that the Commission should eliminate the "significant social policy" exception, as there is no basis for it in state law and the Commission staff has interpreted this exception in an inconsistent manner that shifts with the trends at a given time.[16] This view was echoed by many of the participants at the Commission's proxy process roundtables.[17]

For example, there are a number of situations where an issue that has long been viewed as an ordinary business matter gains popularity and the Commission staff then begins to interpret it as involving significant social policy and therefore requires the proposal to be included in the company's proxy statement.[18] However, there is no

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[16] In fact, in 1998 amendments to the Rule, the Commission state that "some types of . . . social policy issues . . . raise difficult interpretive questions." *Amendments to Rules on Shareholder Proposals*, Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release").

[17] *See, e.g.*, John C. Coffee, Columbia Law School, May 7th Transcript at 44, 68-69 ("[T]he current system of the ordinary business exclusion under 14a is not working . . . . There is no real standard for what is 'ordinary' versus 'extraordinary.' It shifts with the time."); Cary Klafter, Intel Corporation, May 7th Transcript at 174-75 ("When you look at the universe of no-action letters, it is very oftentimes an imperfect pattern."); James J. Hanks, Jr., Venable LLP, May 7th Transcript at 193 ("[The SEC's] social responsibility exception is ill-conceived and I would urge you to reconsider it if you want to preserve the ordinary business exception.")

[18] *See, e.g., International Business Machines Corp.*, SEC No-Action Letter (Feb. 16, 2000) (decision to convert a traditional defined benefits pension plan to a "cash balance" plan raises significant social policy concerns). Moreover, in an attempt to avoid exclusion under Rule 14a-8, some shareholder proposals focus on ordinary business matters but include references to an issue that the staff has deemed a

standard as to when an issue has gained sufficient popularity to characterize it as invoking significant social policy. As several participants in the proxy roundtables stated, this places both companies and shareholders in a difficult position of not knowing what the standards are.[19] Moreover, as Commissioner Atkins remarked, it also has placed the Commission and the Commission staff "in the unenviable position of being the arbiter of these various proposals."[20]

Many participants in the Commission's proxy roundtables agreed that the significant social policy exception permits and encourages social policy-related shareholder proposals having little to do with the economics of the company, while discouraging proposals dealing with matters of actual economic significance to shareholders and the company.[21] In fact, this arbitrary distinction between ordinary business and significant social policy proposals has no basis in state corporation law. Under state corporation law, shareholders elect the directors, and the business and affairs of the company are managed by or under the direction of the board.[22] As Chairman Cox stated in his introduction to the May 7th proxy roundtable, the Commission's proxy rules were intended to "replicate as nearly as possible the opportunity that shareholders would have to exercise their voting rights at a meeting of shareholders if they were personally present."[23] Instead, the effect of certain of the Commission's proxy rules and interpretations, particularly the significant social policy exception, has been to facilitate

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significant social policy even though the proposal focuses on an ordinary business matter.

19 *See, e.g.*, Cary Klafter, Intel Corporation, May 7th Transcript at 174-75; Amy L. Goodman, Gibson, Dunn & Crutcher, May 7th Transcript at 176-77.

20 May 7th Transcript at 173-74.

21 *See* Stephen Bainbridge, UCLA School of Law, May 7th Transcript at 36-38; Jill E. Fisch, Fordham University School of Law, May 7th Transcript at 91-93; Stanley Keller, Edwards Angell Palmer & Dodge, May 7th Transcript at 142-43; Joseph A. Grundfest, Stanford Law School, May 7th Transcript at 193-94.

22 *See* Del. Code Ann. tit. 8, § 141 (2007).

23 May 7th Transcript at 7-8.

shareholder proposals on subjects that are not appropriate for shareholder action under state law. This should not be the role of the federal proxy process.

D. "Substantially implemented" exclusion.

Business Roundtable believes that the Commission also should review it staff's application of Rule 14a-8(i)(10), which permits exclusion of a shareholder proposal that has been "substantially implemented." Although the original interpretation of Rule 14a-8(i)(10) permitted exclusion of proposals only where the action requested by the proposal had been "fully effected," under the 1983 amendments to the proxy rules, companies may omit proposals that have been "substantially implemented."[24] In adopting this interpretation of Rule 14a-8(i)(10), the Commission stated, "the previous formalistic application of this provision defeated its purpose."[25] The 1998 amendments to the proxy rules reaffirmed the position that a proposal may be omitted if it has been "substantially implemented."[26] Consequently, as noted in the Commission's release adopting the 1983 amendments to the proxy rules, in order to be excludable under Rule 14a-8(i)(10), a shareholder proposal does not need to be "fully effected" – it need only be "substantially implemented." In other words, Rule 14a-8(i)(10) was intended to permit exclusion of a shareholder proposal where a company has implemented the essential objective of the proposal, even where the manner by which the company implements the proposal does not precisely correspond to the actions sought by a shareholder proponent. In this regard, the Commission staff has stated, "a determination that the [c]ompany has substantially implemented the proposal depends upon whether [the company's] particular policies, practices and procedures compare favorably" with those requested under the proposal, and not on the exact means of implementation.[27]

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[24] *Amendments to Rule 14a-8 Under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders*, Exchange Act Release No. 20091, § II.E.6 (August 16, 1983).

[25] *Id.*

[26] *See* 1998 Release, note 30 and accompanying text.

[27] *Texaco, Inc.*, SEC No-Action Letter (Mar. 28, 1991) (*emphasis added*).

Despite the Commission's clear intent and the staff's language, it appears that in recent years the staff has applied Rule 14a-8(i)(10) in an increasingly narrow manner. This has resulted in companies spending unnecessary time and expense on no-action requests and shareholders having to vote on issues that their companies already have addressed.[28] For example, in a number of recent letters, the staff has not permitted exclusion of shareholder proposals calling for companies to adopt clawback policies, even where boards have considered and adopted such policies.[29] It appears that the staff has done so because the shareholder proposal covered additional officers or had a somewhat different standard of care. This clearly is a return to a "formalistic" approach to the substantially implemented exclusion that is inconsistent with the Commission's intent. Business Roundtable believes that once a company board has addressed an issue in a manner that it believes to be in the best interest of the company's shareholders, that issue should not be an appropriate subject for a Rule 14a-8 shareholder proposal. This position is consistent with Delaware and other state corporation statutes, which generally provide that "the business and affairs of every corporation . . . shall be managed by or under the direction of a board of directors."

E. <u>Bylaw amendments concerning non-binding shareholder proposals</u>.

The Commission has requested comment as to whether it should adopt rules that would enable shareholders to determine the procedures a company will follow with regard to non-binding shareholder proposals. We agree with the Commission's view that recent developments, including increased opportunities for dialogue between shareholders and company boards and management and the Commission's proposal to remove perceived barriers to shareholder participation in electronic shareholder forums,

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[28] *See* Cary Klafter, Intel Corporation, May 7th Transcript at 175; Amy L. Goodman, Gibson, Dunn & Crutcher, May 7th Transcript at 139-140.

[29] *See, e.g., Bristol-Myers Squibb Co.*, SEC No-Action Letter (Feb. 20, 2006) (reconsideration denied, Mar. 17, 2006).

have significantly enhanced opportunities for collaborative discussion.[30] In light of these other avenues available for shareholders to communicate with each other and with company boards and management, we believe that in limited instances it may no longer be necessary for the Commission to dictate the procedures for non-binding shareholder proposals.

If the Commission chooses to adopt rules that would permit shareholders to propose non-binding shareholder proposal bylaws, given the importance of these bylaws and the need for consistency, the Commission should require such shareholders to satisfy heightened ownership requirements. Moreover, such procedures should not be limited by Rule 14a-8, but by state law and the company's charter or bylaws. This approach would allow flexibility for shareholders to tailor bylaws relating to non-binding shareholder proposals to the specific characteristics of the company and its shareholders.

Business Roundtable believes that the Commission should avoid being overly prescriptive in adopting rules relating to non-binding shareholder proposal bylaws and should leave interpretive matters involving a company's bylaws to the state courts. They are the appropriate forum for interpreting and enforcing bylaw procedures for non-binding shareholder proposals and for resolving disagreements between companies and proponents of non-binding shareholder proposals. Moreover, to the extent a company's board of directors is permitted under the company's governing documents and state law to adopt bylaw amendments without shareholder approval, the board of directors should be permitted to adopt a bylaw establishing a procedure for non-binding shareholder proposals that would supersede the provisions in Rule 14a-8 relating to non-binding shareholder proposals. As noted above and as emphasized by several participants at the

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[30] Several participants in the Commission's proxy roundtables echoed this view. *See* David Hirschmann, President, U.S. Chamber of Commerce Center for Capital Markets Competitiveness, May 25th Transcript at 31-32; Amy L. Goodman, Gibson, Dunn & Crutcher, May 25th Transcript at 63-64; William J. Mostyn III, Deputy General Counsel and Corporate Secretary, Bank of America, May 25th Transcript at 64-65.

proxy process roundtables, the Commission's proxy rules were intended to vindicate state rights, not supplement them.[31]

F. Electronic petition model.

The Commission has requested comment on whether it should adopt a provision to enable companies to follow an electronic petition model for non-binding shareholder proposals in lieu of Rule 14a-8. In light of the many practical difficulties with the electronic petition model expressed by several participants at the Commission's roundtable discussions,[32] Business Roundtable believes that the Commission should not move forward with this concept at this time. Instead, as discussed above, Business Roundtable supports the Commission's proposal to facilitate shareholder communications in electronic shareholder forums.

G. Additional disclosure of voting results.

The Commission has requested comment on whether it should require a company to provide additional disclosure with regard to the voting results for non-binding shareholder proposals. Business Roundtable supports additional disclosure of shareholder proposal results for both non-binding and binding shareholder proposals where the necessary standard for passage is not based on the number of votes cast for or against a particular matter, which is the currently required disclosure (*e.g.*, reporting the vote as a percentage of outstanding shares should be required when that is the standard for approval).

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[31] *See* Christopher Cox, Chairman, U.S. Securities and Exchange Commission, May 25th Transcript at 6–8. *See also* John C. Coffee, Columbia Law School, May 7th Transcript at 42.

[32] *See, e.g.*, Paul M. Neuhauser, University of Iowa College of Law, May 7th Transcript at 167-171; Amy L. Goodman, Gibson, Dunn & Crutcher, May 25th Transcript at 62-64; William J. Mostyn III, Deputy General Counsel and Corporate Secretary, Bank of America Corporation, May 25th Transcript at 64-66.

Appendix A

Examples of Shareholder Proposal Resubmission Abuses

Rule 14a-8(i)(12) currently permits the exclusion of a shareholder proposal concerning substantially the same subject matter as a prior proposal submitted to a shareholder vote within the preceding five calendar years where the proposal received (1) less than 3% of the votes cast, if the proposal was submitted for a vote at only one meeting during such period, (2) less than 6% of votes cast on its last submission to shareholders, if the proposal was submitted for a vote at only two meetings during such period, or (3) less than 10% of votes cast on its last submission to shareholders, if the proposal was submitted for a vote at three or more meetings during such period. Set forth below are examples of how Rule 14a-8(i)(12) fails to prevent repeated shareholder votes on shareholder proposals despite relatively low votes cast for such proposals. These examples are based on data between 1997 and 2004 from the Investor Responsibility Research Center and between 2004 and September 21, 2007 from Institutional Shareholder Services. This data reflects each source's description of each shareholder proposal's subject matter, but does not include shareholder proposals that received 40% or more of the votes cast.

Company	Subject Matter of Proposal	Meeting Date	Votes For
99 Cents Only Stores	Adopt labor standards for vendors	2002	9.5%
		2003	20.5%
		2004	19.0%
Abbott Laboratories	Report on political donations and policy	2004	7.2%
		2005	8.0%
		2006	9.3%
Adobe Systems Inc.	Require option shares to be held	2003	8.9%
		2004	30.3%
		2005	29.1%
American Eagle Outfitters, Inc.	Implement Internal Labor Organization (ILO) standards and third-party monitor	2001	11.4%
		2002	9.0%
		2003	13.0%
		2004	7.4%

Company	Subject Matter of Proposal	Meeting Date	Votes For
American Power Conversion Corp.	Commit to/report on board diversity	2000	30.1%
		2002	24.1%
		2003	28.6%
Anheuser-Busch Companies, Inc.	Independent board chairman	1999	15.6%
		2000	17.6%
		2001	18.8%
		2003	9.8%
AT&T Inc.	Link executive pay to social criteria	2001	13.6%
		2004	9.0%
		2005	10.1%
		2006	11.9%
AT&T Inc.	Drop sexual orientation from equal employment opportunity (EEO) policy	2001	7.4%
		2002	11.5%
		2003	3.3%
AT&T Inc.	Report on political donations and policy	2005	12.5%
		2006	15.2%
		2007	13.3%
Baker Hughes Inc.	Implement MacBride principles	1996	19.1%
		1997	15.9%
		1998	19.7%
		1999	22.9%
		2000	23.7%
		2001	15.7%
		2002	11.2%
		2003	6.4%
Bed Bath & Beyond Inc.	Report on EEO and plans against "glass ceiling"	2002	26.3%
		2003	24.9%
		2004	12.0%
Bellsouth Corp.	Report on political donations and policy	2004	15.1%
		2005	12.2%
		2006	12.1%

Company	Subject Matter of Proposal	Meeting Date	Votes For
The Boeing Co.	Independent board chairman	2003	29.7%
		2005	26.6%
		2006	36.2%
The Boeing Co.	Provide pension choices	2001	9.0%
		2002	12.0%
		2003	12.2%
		2004	10.8%
The Boeing Co.	Adopt comprehensive human rights policy	2003	25.8%
		2004	17.4%
		2005	21.2%
		2006	25.0%
		2007	25.0%
The Boeing Co.	Develop military contracting criteria	1999	6.3%
		2004	7.8%
		2005	7.7%
		2006	8.8%
Brinker International, Inc.	Report on gene-engineered food	2001	9.8%
		2002	7.5%
		2003	8.0%
Citigroup Inc.	Independent board chairman	2004	19.5%
		2005	30.8%
		2006	16.1%
		2007	20.9%
Citigroup Inc.	Link executive pay to social criteria	2001	5.1%
		2002	7.3%
		2003	6.8%
The Coca-Cola Company	Performance/time-based restricted shares	2004	27.8%
		2005	31.9%
		2006	32.3%

Company	Subject Matter of Proposal	Meeting Date	Votes For
Coca-Cola Enterprises	Golden parachutes	2004	30.6%
		2005	26.3%
		2006	32.5%
Colgate-Palmolive Co.	Implement ILO standards and third-party monitor	2001	11.4%
		2002	8.4%
		2003	11.1%
		2004	8.3%
Comcast Corp.	Eliminate dual class stock	2004	31.0%
		2005	34.2%
		2006	28.4%
		2007	31.2%
Consolidated Edison, Inc.	Disclose executive officers entitled to receive in excess of $500,000 annually and their compensation	1997	12.1%
		1998	10.0%
		1999	10.3%
		2000	13.7%
		2001	12.2%
		2002	12.4%
		2003	16.5%
		2004	14.8%
		2005	13.1%
		2006	14.1%
		2007	14.1%
Cooper Industries LTD.	Implement ILO standards and third-party monitoring	2005	8.6%
		2006	6.8%
		2007	12.4%
Crane Co.	Implement MacBride principles	2002	12.9%
		2003	8.4%
		2004	11.6%
		2006	13.4%
		2007	12.1%

Company	Subject Matter of Proposal	Meeting Date	Votes For
Dow Jones & Co., Inc.	Independent board chairman	2003	4.9%
		2004	12.9%
		2005	19.2%
		2006	22.2%
		2007	12.1%
E.I. Du Pont De Nemours & Co.	Implement ILO standards	2001	8.3%
		2002	6.5%
		2004	13.1%
E.I. Du Pont De Nemours & Co.	Report on steps to break "glass ceiling"	2000	8.4%
		2001	8.5%
		2002	20.4%
		2003	5.8%
E.I. Du Pont De Nemours & Co.	Link executive pay to social criteria	2004	11.8%
		2005	8.6%
		2006	8.6%
E.I. Du Pont De Nemours & Co.	Report on gene-engineered plants	2005	6.1%
		2006	7.2%
		2007	7.0%
Emerson Electric Co.	Adopt sexual orientation anti-bias policy	2001	12.8%
		2002	10.6%
		2003	10.1%
		2005	38.9%
Exxon Mobil Corp.	Affirm political nonpartisanship	2003	7.0%
		2004	7.3%
		2005	7.2%
Exxon Mobil Corp.	Develop renewable energy alternatives	2000	6.2%
		2001	8.9%
		2002	20.2%
		2003	21.3%

Company	Subject Matter of Proposal	Meeting Date	Votes For
Exxon Mobil Corp.	Adopt sexual orientation anti-bias policy	1999	5.9%
		2000	8.3%
		2001	13.0%
		2002	23.9%
		2003	27.3%
		2004	28.9%
		2005	29.5%
		2006	34.6%
		2007	37.7%
Ford Motor Co.	Disclose executive officers entitled to receive in excess of $500,000 annually and their compensation	1997	7.7%
		2003	10.3%
		2004	10.5%
		2005	10.0%
		2006	9.4%
		2007	9.8%
Ford Motor Co.	Investigate family/company relationships	2001	15.8%
		2002	16.7%
		2003	18.9%
		2004	16.2%
		2005	18.3%
General Electric Co.	Disclose costs of PCB cleanup delay	2000	9.0%
		2001	10.6%
		2002	21.7%
		2003	25.6%
		2004	12.7%
		2005	27.5%
General Electric Co.	Independent board chairman	2003	10.6%
		2004	18.6%
		2006	15.0%
General Electric Co.	Limit number of directorships	2004	23.6%
		2005	28.1%
		2006	33.8%

Company	Subject Matter of Proposal	Meeting Date	Votes For
General Electric Co.	Report on political donations and policy	2000	7.4%
		2004	9.9%
		2005	10.5%
General Electric Co.	Report on waste storage at nuclear plant	2003	7.1%
		2004	7.2%
		2005	7.7%
General Electric Co.	Adopt cumulative voting	1999	22.9%
		2000	22.4%
		2001	30.5%
		2002	25.3%
		2003	16.6%
		2004	21.0%
		2005	19.7%
		2006	22.3%
		2007	32.4%
General Motors Corp.	Abolish stock options	2004	6.1%
		2005	9.0%
		2006	6.5%
General Motors Corp.	Golden parachutes	2001	19.6%
		2004	23.9%
		2005	16.2%
General Motors Corp.	Increase key committee independence	2001	13.5%
		2002	24.6%
		2003	10.9%
		2004	11.1%
General Motors Corp.	Independent board chairman	1996	14.7%
		1997	7.0%
		2003	8.2%
		2004	13.6%
		2006	18.5%

Company	Subject Matter of Proposal	Meeting Date	Votes For
General Motors Corp.	Report on/reduce greenhouse gas emissions	2003	6.2%
		2004	7.0%
		2005	5.6%
Hasbro, Inc.	Implement ILO standards and third-party monitor	2002	6.9%
		2003	12.6%
		2004	10.1%
		2005	10.2%
		2006	9.8%
Hewlett-Packard Co.	Adopt code of conduct for China operations	2001	8.1%
		2002	7.9%
		2003	8.0%
The Home Depot, Inc.	Affirm political nonpartisanship	2005	9.5%
		2006	12%
		2007	10.5%
The Home Depot, Inc.	Implement ILO standards and third-party monitor	2001	10.4%
		2002	7.7%
		2003	8.0%
		2004	9.5%
The Home Depot, Inc.	Report on EEO	1998	14.4%
		1999	11.5%
		2000	10.4%
		2005	30.0%
		2006	35.9%
		2007	25.6%
International Business Machines Corp.	Provide pension choices	2004	14.0%
		2005	13.1%
		2006	13.7%

Company	Subject Matter of Proposal	Meeting Date	Votes For
Loews Corp.	Adopt cumulative voting	1996	27.6%
		1997	27.5%
		2003	32.5%
		2004	24.5%
		2005	25.7%
		2006	26.8%
		2007	16.2%
Loews Corp.	Issue warnings on secondhand tobacco smoke	2002	4.0%
		2003	13.7%
		2004	13.1%
Lowe's Companies, Inc.	Implement ILO standards and third-party monitor	2001	8.8%
		2002	6.1%
		2003	6.7%
Marriott International, Inc.	Adopt cumulative voting	1997	19.8%
		1998	14.7%
		1999	17.5%
		2000	14.2%
		2001	18.1%
		2002	18.7%
		2003	27.2%
		2004	28.8%
Mattel, Inc.	Report on implementation of global principles	1999	5.0%
		2000	16.4%
		2001	8.1%
		2005	7.6%
		2006	6.7%
		2007	7.4%
Merck & Co., Inc.	Abolish stock options	2004	7.2%
		2005	9.8%
		2006	4.4%

Company	Subject Matter of Proposal	Meeting Date	Votes For
Milacron Inc.	Restrict executive compensation	2001	13.5%
		2002	19.3%
		2003	34.3%
		2004	8.1%
Monsanto Co.	Report on gene-engineered plants	2003	5.9%
		2004	7.5%
		2005	7.6%
Monsanto Co.	Report on pesticides banned in U.S.	2003	13.3%
		2004	13.1%
		2005	13.3%
National Fuel Gas Co.	Take steps to eliminate workplace discrimination	2000	6.4%
		2002	7.5%
		2003	7.0%
Pacific Gas and Electric Co.	Take steps against nuclear accident risk	2002	8.4%
		2003	7.5%
		2004	10.8%
		2005	3.9%
PepsiCo, Inc.	Disclose political contributions in newspapers	2004	4.6%
		2005	8.1%
		2006	3.3%
Pfizer Inc.	Report on drug price restraint efforts	2004	5.0%
		2005	11.1%
		2006	7.0%
Pfizer Inc.	Report on political donations and policy	2004	10.9%
		2005	13.6%
		2006	10.3%
Raytheon Co.	Report on foreign offset agreements	2001	5.9%
		2002	8.2%
		2003	6.8%

Company	Subject Matter of Proposal	Meeting Date	Votes For
Raytheon Co.	Implement MacBride principles	2002	13.1%
		2003	10.3%
		2004	10.1%
		2005	9.8%
Ruby Tuesday Inc.	Report on gene-engineered food	2002	6.3%
		2003	12.1%
		2004	11.6%
		2005	10.6%
Safeway Inc.	Adopt cumulative voting	1997	18.6%
		1998	38.7%
		1999	38.2%
		2000	37.0%
		2001	32.3%
		2004	30.0%
		2005	27.1%
		2006	32.9%
		2007	36.9%
Safeway Inc.	Independent board chairman	2004	33.4%
		2005	20.1%
		2007	13.8%
Stericycle, Inc.	Phase out waste incineration	2004	11.2%
		2005	8.4%
		2006	6.5%
Teletech Holdings, Inc.	Implement MacBride principles	2003	3.5%
		2004	6.1%
		2005	4.9%
Textron Inc.	Report on foreign offset agreements	2002	8.8%
		2003	10.1%
		2004	11.7%

Company	Subject Matter of Proposal	Meeting Date	Votes For
The TJX Companies, Inc.	Implement ILO standards and third-party monitor	2002	6.5%
		2004	10.5%
		2005	8.6%
The TJX Companies, Inc.	Implement MacBride principles	1999	10.1%
		2000	15.9%
		2001	16.4%
		2002	19.2%
		2003	9.3%
Union Pacific Corp.	Independent board chairman	2001	21.4%
		2002	28.3%
		2006	35.6%
United Western BanCorp, Inc	Repeal classified board	2005	23.5%
		2006	28.9%
		2007	13.0%
Verizon Communications Inc.	Increase board independence	2001	30.0%
		2002	27.2%
		2003	22.6%
		2004	20.2%
		2005	24.6%
		2006	24.9%
Verizon Communications Inc.	Report on political donations and policy	2004	15.8%
		2005	15.0%
		2006	33.0%
Visteon Corp.	Review/report on global standards	2002	5.6%
		2003	11.2%
		2004	16.7%
Wal-Mart Stores, Inc.	Issue sustainability report	2004	14.2%
		2005	16.2%
		2006	10.5%

Company	Subject Matter of Proposal	Meeting Date	Votes For
Wal-Mart Stores, Inc.	Report on EEO	2002	11.3%
		2003	13.0%
		2004	16.1%
		2005	18.8%
Wal-Mart Stores, Inc.	Report on stock options by race/sex	2004	13.6%
		2005	15.0%
		2006	10.2%
		2007	10.9%
The Walt Disney Co.	Adopt code of conduct for China operations	2002	6.6%
		2003	9.4%
		2004	8.3%
The Walt Disney Co.	Report on amusement park safety policy	2002	5.3%
		2003	8.6%
		2004	10.5%
The Walt Disney Co.	Review labor standards in China operations	2004	29.0%
		2005	8.9%
		2006	9.1%
Yum Brands Inc.	Issue sustainability report	2003	39.0%
		2004	32.9%
		2005	39.1%
Yum Brands Inc.	Make facilities smoke-free	2002	15.4%
		2003	6.7%
		2004	7.6%
Yum Brands Inc.	Review animal welfare standards	2004	8.0%
		2005	8.8%
		2006	7.3%
Yum Brands Inc.	Urge MacBride on franchisees	2003	12.1%
		2004	13.4%
		2005	14.7%
		2006	10.6%