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Chairman Dodd and members of the Committee, I am pleased to provide the perspective of an institutional investor on the important issue of proxy access, and to represent the California Public Employees' Retirement System.

CalPERS is the largest public pension plan in the nation with more than $250 billion in assets under management. We provide retirement and health benefits to 1.5 million members who work in state and local government.

Since we own shares of more than 7,500 publicly-traded U.S. companies, regulations affecting corporate governance are vitally important to us. We thank the Committee for the opportunity to comment on this issue of shareowner access to company election ballots.

Presently, shareowners have the right to place director election proposals on corporate ballots. The proposed SEC "short rule" would eliminate this existing right and prevent shareowners from filing proposals that request companies to adopt a proxy access provision for director nominations.

The Committee asked us to respond to three questions related to this potential rule change for the 2008 proxy season:

1. Does the U.S. Securities and Exchange Commission need to act before the 2008 proxy season on a new rule affecting shareowner proposals on corporate election ballots?
2. What is the right timing for the SEC to adopt a new rule relating to proxy access?
3. Do shareholders have the right to proxy access?

1. Why the SEC does not need to act before the 2008 proxy season:

"Uncertainty" is a red herring

The Chairman of the Securities and Exchange Commission has told this Committee that the SEC needs to act very quickly to address uncertainty about the current application of the proxy access rule. He argues that he is only doing what is necessary to provide clarity to this process.

However, he can address any alleged uncertainty just as easily by codifying the *AFSCME v. AIG* ruling as by reversing it.

There is no uncertainty **about** the existing rule, which clearly allows shareowners to file proxy access proposals on corporate ballots. The Second Circuit Court clarified in the AIG case that the current SEC regulation does not exclude proxy access.

There is no evidence of uncertainty about **the application** of the rule following the AIG decision. Since the decision was issued, shareowners have submitted three proxy access proposals in 2007. One non-binding proposal passed at Cryo-Cell International, Inc. Two others received substantial support exceeding 42 percent of votes cast at UnitedHealth Group and Hewlett-Packard Co.

There will be no "tsunami" of harm in the marketplace if the AIG decision is left in place through the 2008 proxy season. In fact, the only uncertainty about proxy access comes as a result of the mixed messages from Chairman Cox concerning the SEC's intent to adopt a "new-and-improved" proxy access proposal next year.

No company challenged any proxy access proposal in court this year. The odds are low that another circuit court would question the sound reasoning of the AIG case. Even if a federal district court ruled differently, no split between circuit courts would occur until another federal appellate court addressed the issue differently from the Second Circuit.

In the meantime, the SEC has lost at least one commissioner. We expect that it will lost another by the end of the year. On an issue as significant as this one, we believe it is important that the Commission be fully staffed before it takes

action. Otherwise, its decisions will lack credibility with investors and the marketplace.

No risk from lack of disclosure about proponents of proxy proposals

The Chairman has also told this Committee that the SEC needs to act soon to protect investors who might be put at risk by lack of disclosure about shareowners who file proxy access proposals.

For example, a proposed disclosure requirement seeks to determine if a shareowner acquired shares to effect or influence a change in control of the company, or had some conflict of interest involving the company or a company affiliate.

However, shareowners primarily vote on the merits of proxy proposals rather than on what they know about proponents. Background information about proponents is usually secondary.

If disclosure of this sort is so crucial, companies that had proxy access resolutions on their ballots in 2007 surely would have expressed concern. None did.

Requiring background information about the proponents of proxy access proposals never came up until the SEC raised it this year. Neither companies nor shareowners have previously requested such information -- even in the most hotly contested proxy campaigns.

2. Why this is the wrong time for a proxy access rule change

Too important to leave to a sub-set of a full Commission

The Chairman says it is important to wait until next year to pursue expanding shareowner rights, yet he would take present rights away before this year ends.

In doing so, he is ignoring the advice of two former SEC commissioners, this Committee, the House Financial Services Committee, and many institutional investors. The proposed rule change also fails to adequately reflect the input received at three SEC roundtables on the issue this year.

The five-member SEC failed to move on the proxy access issue for years when it had a full commission. Today, one of those five commissioners has vacated a seat, and another will leave soon. Yet suddenly there seems to be an emergency, in the Chair's view.

A decision of this importance warrants the attention of a full commission. The current “short proposal”, if adopted, would shut shareowners out of the most important and democratic governance process at their companies.

There is no compelling reason for this rush to judgment. Instead, the record shows that companies that allow shareowners to place director candidates on their election ballots have presented no cause for concern.

Apria Healthcare Group has had proxy access procedures in place for several years, with no adverse impact on share value or any tyranny of a minority of special interest directors who exploit the election process. Comverse Technology voluntary adopted a proxy access provision this year with no ill effect. Companies in both developed and emerging markets around the world have a proxy access provision for shareowners to use to submit director nominees. We are unaware of any examples where this provision has caused any harm to these companies.

3. Why shareholders have the right of proxy access

Right given by law

The right to participate in the governance of the corporations we own is a fundamental aspect of corporate law, and an invaluable tool to help preserve and enhance investments we made for our plan participants.

Yet the Chairman would have the Commission roll back the clock to effectively overturn last year's court ruling in *AFSCME v. AIG.* Such unprecedented anti-investor action by the SEC would deny shareowners the right to protect their interests by ensuring fair director elections and director accountability to the owners of the company.

For 16 years, the SEC held shareowners had a basic right to use the company ballot to nominate directors. It reversed itself in 1990 for reasons never publicly given. State and federal law and regulations widely recognize investors' right to a voice in the corporate governance and voting process.

Federal law authorizes the Commission to reinforce these state law rights, as it currently does under current practice. As the Commission itself noted in July 2007 (the "Shareholder Proposal Release"), the proxy rules "have been designed to facilitate the corporate proxy process so that it functions, as nearly as possible, as a replacement for an actual, in-person gathering of security holders, thus enabling security holders to control the corporation as effectively as they might have by attending a shareholder meeting."[1]

Proxy access allows shareowners to communicate their concerns when a Board of Directors fails to provide the oversight required to protect shareowner

[1] See *Shareholder Proposals,* SEC RE. No. 34-56160 (Jul. 27, 2007) (citing to *Business Roundtable v. SEC,* 905 F.2d 406 (D.C. Cir. 1990)).

interests. Such failures have contributed to option backdating, the issuance of incorrect financial statements, and executive compensation policies that fail to adequately align the interests of shareowners and management.

Proxy access gives shareowners an economically efficient manner to communicate directly with other investors, with the board of directors, and management. Under the corporate law of most jurisdictions, a shareowner has the right to make nominations from the floor of the annual meeting unless prohibited by a company's bylaws or certificate of incorporation.

Conclusion

American investors cannot afford to lose an important tool of checks and balances to prevent company train wrecks caused by poor governance practices. Checks and balances might have prevented the WorldCom and Enron accounting scandals, stock option backdating, and overly-generous compensation packages for the executives of failed companies.

Fears that a minority of shareowners might abuse proxy access to degrade share value are unwarranted. Shareowner majorities would always be required to adopt bylaw changes and elect board directors. It is unlikely that a majority of shareowners would go against the economic self-interest that they share with company boards and managers.

We believe that the status quo on the proxy access issue does no harm to shareowners, as would an ill-considered change in the rules that would take away the rights investors have now.

We prefer self-government to regulation and legislation – except when reasonable checks and balances are threatened. In such cases, we turn to regulators and lawmakers to do the right thing. In this regard, we appreciate this Committee's interest and oversight role in this matter.

We also appreciate the opportunity to express our opinion on the issue before this Committee for the good of corporate America, investors, and the workers whose earnings we hold in trust.

The Commission should return to its roots as an independent protector of shareowner interests. Yet as it stands now, the SEC is contemplating less democracy, not more, and for all the sophistication of our markets in the U.S., we lag behind other countries in this area. The United States is the world's only developed economy that does not give shareowners the right to place director nominees on company election ballots.

Now is the time for the SEC to show it truly stands up for shareowners, to allow the AIG rule to stand until a full and truly bipartisan Commission can make a fresh start, and to avoid destabilizing confidence in our financial markets.

Make no mistake: voting to adopt the SEC's "short rule" is a clear and conscious decision to take away shareowner rights. Furthermore, promising to advance new shareowner access proposals once the Commission has a full compliment of Commissioners – whenever that might be – only serves to underscore the harm that Chairman Cox recognizes this impending SEC action would create.

Maintaining the status quo while a fair, comprehensive approach to proxy access can be fashioned and approved by a five-member, balanced SEC is a reasonable approach that will do no harm.

We urge this Committee to send the strongest possible message that the Commission reconsider its timing and start anew when a full Commission is again a reality. A fundamental principle of the SEC's mission is to "do no harm" to the shareowners it is charged with protecting. This ill-timed proposal that could be acted on by a subset of a full Commission is unfair, unwise, and contrary to the very purpose for which the SEC was established.

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