SECURITIES AND EXCHANGE COMMISSION

17 CFR PART 240

[Release No. 34-56160; IC-27913; File No. S7-16-07]

RIN 3235-AJ92

Shareholder Proposals

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing amendments to the rules under the Securities Exchange Act of 1934 concerning shareholder proposals and electronic shareholder communications, as well as to the disclosure requirements of Schedule 14A and Schedule 13G. Proposed amendments to Exchange Act Rule 14a-8 would enable shareholders to include in company proxy materials their proposals for bylaw amendments regarding the procedures for nominating candidates to the board of directors. Schedule 14A and Schedule 13G would be amended to provide shareholders with additional information about the proponents of these proposals, as well as any shareholders that nominate a candidate under such an adopted procedure. Included in these nominating shareholder disclosures would be the disclosure requirements that currently apply to traditional proxy contests. Finally, the proposed amendments would revise the proxy rules to clarify that participation in an electronic shareholder forum that may constitute a solicitation would be generally exempt from the proxy rules. This release accompanies a second release, Shareholder Proposals Relating to the Election of Directors, in which we publish an interpretation and propose a rule change to affirm the staff of the Division of Corporation Finance's historical application of Rule 14a-8(i)(8).

DATES: Comments should be received by October 2, 2007.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/proposed.shtml);
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-16-07 on the subject line; or
- Use the Federal Rulemaking Portal (http://www.regulations.gov). Follow the instructions for submitting comments.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-16-07. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (http://www.sec.gov/rules/proposed.shtml). Comments also are available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you

wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Lillian Brown, Steven Hearne, or Tamara Brightwell, at (202) 551-3700, in the Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-3010.

SUPPLEMENTARY INFORMATION: We are proposing amendments to Rule 14a-2,[1] Rule 14a-6,[2] Rule 14a-8,[3] Schedule 14A,[4] and Schedule 13G[5] under the Securities Exchange Act of 1934,[6] and proposing new Rule 14a-17 and Rule 14a-18 under the Exchange Act.

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1 17 CFR 240.a-2.

2 17 CFR 240.14a-6.

3 17 CFR 240.14a-8.

4 17 CFR 240.14a-101.

5 17 CFR 240.13d-102.

6 15 U.S.C. 78a et seq.

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I. Overview

A. Federal Regulation of the Proxy Process

Regulation of the proxy process is a core function of the Commission and is one of the original responsibilities that Congress assigned to the agency in 1934. Section 14(a) of the Exchange Act[7] stemmed from a Congressional belief that "fair corporate suffrage is an important right that should attach to every equity security bought on a public exchange."[8] The Congressional committees recommending passage of Section 14(a) proposed that "the solicitation and issuance of proxies be left to regulation by the Commission."[9] Congress intended that Section 14(a) give the Commission the "power to control the conditions under which proxies may be solicited"[10] and that this power be exercised "as necessary or appropriate in the public interest or for the protection of investors."[11] Because the Commission's authority under Section 14(a) encompasses both disclosure and proxy mechanics,[12] the proxy rules have long governed not only the

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7 15 U.S.C. 78n(a).

8 Mills v. Electric Auto-Lite Co., 396 U.S. 375, 381 (1970), quoting H. R. Rep. No. 1383, 73d Cong., 2d Sess., at 13 (1934). See also J. I. Case Co. v. Borak, 377 U.S. 426, 431 (1964).

9 S. Rep. No. 792, 73d Cong., 2d Sess., at 12 (1934).

10 H.R. Rep. No. 1383, 73d Cong., 2d Sess., at 14 (1934). The same report demonstrated a congressional intent to prevent frustration of the "free exercise of the voting rights of stockholders." Id.

11 15 U.S.C. 78n(a).

12 See Business Roundtable v. SEC, 905 F.2d 406, 411 (D.C. Cir. 1990) ("We do not mean to be taken as saying that disclosure is necessarily the sole subject of §14"); Roosevelt v. E.I. du Pont de Nemours & Co., 958 F.2d 416, 421-22 (D.C. Cir. 1992) (Congress "did not narrowly train section 14(a) on the interest of stockholders in receiving information necessary to the intelligent exercise of their" state law rights); SEC v. Transamerica Corp., 163 F.2d 511, 518 (3d Cir. 1947) (upholding the Commission's authority to promulgate Exchange Act Rule 14a-8), cert. denied, 332 U.S. 847 (1948). See also John C. Coffee Jr., Federalism and the SEC's Proxy Proposals, New York Law Journal 5 (March 18, 2004) (Section 14(a) "does not focus exclusively on disclosure; rather, it contemplates SEC rules regulating procedure in order to grant shareholders a

information required to be disclosed to ensure that shareholders receive full disclosure of all information that is material to the exercise of their voting rights under state law and the corporation's charter, but also the procedure for soliciting proxies.[13]

In assigning this responsibility to the Commission, Congress demonstrated its "intent to bolster the intelligent exercise of shareholder rights granted by state corporate law."[14] To identify the rights that the proxy process should protect, the Commission has taken as its touchstone the rights of security holders guaranteed to them under state corporate law. As Chairman Ganson Purcell explained to a committee of the House of Representatives in 1943:

> The rights that we are endeavoring to assure to the stockholders are those rights that he has traditionally had under State law to appear at the meeting; to make a proposal; to speak on that proposal at appropriate length; and to have his proposal voted on.[15]

Thus, the federal proxy authority is not intended to supplant state law, but rather to reinforce state law rights with a sturdy federal disclosure and proxy solicitation regime.

'fair' right of corporate suffrage"); Louis Loss & Joel Seligman, Securities Regulation 1936-37 (3d ed. 1990) (The Commission's "power under §14(a) is not necessarily limited to ensuring full disclosure. The statutory language is considerably more general than it is under the specific disclosure philosophy of the Securities Act of 1933").

13 E.g., Exchange Act Rule 14a-4 (17 CFR 240.14a-4), Exchange Act Rule 14a-7 (17 CFR 240.14a-7) and Exchange Act Rule 14a-8 (17 CFR 240.14a-8). Each specifies procedural requirements that companies must observe in soliciting proxies. Exchange Act Rule 14a-4(b)(2) requires that the form of proxy furnish the security holder with the means to withhold approval for the election of a director. Exchange Act Rule 14a-7 provides a procedure under which a security holder may be able to obtain a list of security holders. Exchange Act Rule 14a-8 provides a procedure under which a qualifying security holder can obligate the company to include certain types of proposals, along with statements in support of those proposals, in the company's proxy statement.

14 Roosevelt, 958 F.2d at 421.

15 Securit[ies] and Exchange Commission Proxy Rules: Hearings on H.R. 1493, H.R. 1821, and H.R. 2019 Before the House Comm. on Interstate and Foreign Commerce, 78th Cong., 1st Sess., at 172 (1943) (testimony of SEC Chairman Ganson Purcell).

To that end, the Commission has sought to use its authority in a manner that does not conflict with the primary role of the states in establishing corporate governance rights. For example, Rule 14a-8, the shareholder proposal rule, explicitly provides that a shareholder proposal is not required to be included in a company's proxy materials if it "is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization."[16]

One of the key rights that shareholders have under state law is the right to appear in person at an annual or special meeting and, subject to compliance with applicable state law requirements and the requirements contained in the company's charter and bylaws, such as an advance notice bylaw, present their own proposals for a vote by shareholders at that meeting.[17] These proposals can relate to a wide variety of matters, including the nomination of the shareholders' own candidates for the election of directors.[18] Most shareholders, however, vote through the grant of a proxy before the meeting instead of attending the meeting to vote in person. Therefore, an important function of the proxy rules is to provide a mechanism for shareholders to present their proposals to other shareholders, and to permit shareholders to instruct their proxy how to vote on these proposals. Our regulations 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

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16 17 CFR 240.14a-8(i)(1).

17 For example, Section 211(b) of the Delaware General Corporation Law permits any "proper business," in addition to the election of directors, to be conducted at an annual meeting of shareholders. In order to provide for an orderly period of solicitation before a meeting, many corporations have included provisions in their charter or bylaws to require advance notice of any shareholder resolutions, including nominations for director, to be presented at a meeting. See R. Franklin Balotti & Jesse A. Finkelstein, Delaware Law of Corporations & Business Organizations § 7.9 (4th ed. 2006).

18 Id.

gathering of security holders, thus enabling security holders "to control the corporation as effectively as they might have by attending a shareholder meeting."[19]

The Commission's proxy rules provide a means for shareholders to propose matters to other shareholders for a vote at an annual or special meeting. For example, under Rule 14a-8 a company must include in its proxy materials some proposals that shareholders could present at the annual or special meeting under state law. Other proposals can be included in proxy materials prepared by the shareholders themselves. In this regard, the proxy rules permit any shareholder to solicit votes for the election of a nominee to the board through a proxy solicitation by that shareholder. The proxy rules do not, however, require a company to include a shareholder's nominee for director in its proxy materials. Conversely, the proxy rules require the company to include in its proxy materials non-binding resolutions of eligible shareholders on subjects unrelated to the company's ordinary business unless the proposals fall within one of the substantive bases for exclusion in Rule 14a-8. The proposed amendments to the proxy rules discussed below address these matters.

B. The Shareholder Proposal Process

Rule 14a-8 creates a procedure under which shareholders, subject to certain requirements, may present in the company's proxy materials a broad range of binding and non-binding proposals, including non-binding proposals regarding matters that traditionally are within the province of the board and management. The rule permits a

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[19] Business Roundtable, 905 F.2d at 410.

shareholder owning a relatively small amount of the company's shares[20] to submit his or her proposal to the company, and the rule requires the company to include the proposal alongside management's proposals in the company's proxy materials. For example, a proposal concerning a matter that under state law would not be a proper subject for shareholder action alone if it were cast as a binding proposal, may nonetheless be included in the company's proxy materials under Rule 14a-8 if it is cast as a recommendation or request that the board take specified action.[21] In all cases, the proposal may be excluded by the company if it fails to satisfy the rule's procedural requirements or falls within one of the rule's thirteen substantive categories of proposals that may be excluded.

Because the proxy process is meant to serve, as nearly as possible, as a replacement for an actual, in-person meeting of shareholders, it should facilitate proposals concerning only those subjects that could properly be brought before a meeting under the corporation's charter or bylaws and under state law. Most state corporation codes specify certain items of business that are required to be presented to the shareholders for a vote, such as the election of directors, and others that may or may not be brought to a vote, either in the discretion of the chair or as specified by the corporation's charter or bylaws.

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[20] Exchange Act Rule 14a-8(b)(1) (17 CFR 240.14a-8(b)(1)) provides that a holder of at least $2,000 in market value, or 1% of the company's securities entitled to be voted, may submit a shareholder proposal subject to other procedural requirements and substantive bases for exclusion under the rule.

[21] State corporation statutes generally provide that the business of the corporation shall be managed by, or under the direction of, the board of directors.

With respect to the chair's discretion, in general state law provides that the order of business at a meeting of shareholders and the rules for the conduct of the meeting are determined by the chair, who is usually appointed as provided in the bylaws, or in the absence of such provision, by the board of directors.[22] In order to reinforce the state law rights and responsibilities of shareholders, therefore, the proxy rules should be neutral with respect to the manner in which meetings of shareholders are conducted, and should not interfere with the chair's ability to conduct the meeting in accordance with the requirements of state law and the corporation's governing documents.

With respect to subjects and procedures for shareholder votes that are specified by the corporation's governing documents, most state corporation laws provide that a corporation's charter or bylaws can specify the types of binding or non-binding proposals that are permitted to be brought before the shareholders for a vote at an annual or special meeting. Rule 14a-8(i)(1) supports these determinations by providing that a proposal that is violative of the corporation's governing documents may be excluded from the corporation's proxy materials.

Rule 14a-8 specifies that companies must notify the Commission when they intend to exclude a shareholder's proposal from their proxy materials. This notice goes to the staff of the Division of Corporation Finance. In the notice, the company provides the staff with a discussion of the basis or bases upon which the company intends to exclude the proposal and requests that the staff not recommend enforcement action if the

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[22] See, e.g., Section 7.08, Model Business Corporation Act. The Comment to this Section states that it is expected that the chair will not misuse the power to determine the order of business and to establish rules for the conduct of the meeting so as to unfairly foreclose the right of shareholders – subject to state law and the corporation's charter and bylaws – to raise items which are properly a subject for shareholder discussion or action at some point in the meeting prior to adjournment.

company excludes the proposal. A shareholder proponent may respond to the company's notice, but is not required to do so. Generally, the staff responds to each notice with a "no-action" letter to the company, a copy of which is provided to the shareholder, in which the staff either concurs or declines to concur with the company's view that there is a basis for excluding the proposal.[23]

Each proxy season, the Division of Corporation Finance responds to hundreds of these no-action requests.[24] Although the Commission itself is not directly involved in responding to no-action requests, where a matter involves "substantial importance and where the issues are novel or highly complex," the Division may present an issue to the Commission for review – either at the Division's own instance or at the request of the company or the shareholder proponent.[25] Rule 14a-8 thus places the Commission's staff at the center of frequent disputes over whether a proposal must be included in the company's proxy materials.

C. Commission Review of the Proxy Process

In meeting the Commission's statutory obligation under Section 14(a) of the Exchange Act, this agency has monitored the development of the proxy process closely since 1934. Over the decades, we have made numerous improvements and refinements

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[23] The staff's response is an informal expression of its views, and does not necessarily reflect the view of the Commission. Either the shareholder proponent or the company may obtain a decision on the excludability of a challenged proposal from a federal court.

[24] During the 2006-2007 proxy season, the Division of Corporation Finance responded to approximately 360 Exchange Act Rule 14a-8 no-action requests. To respond to these requests, each proxy season the Division assembles a task force of attorneys who work full-time on the project from approximately January through April of each year.

[25] 17 CFR 202.1(d).

to the proxy rules based upon practical experience and the needs of investors.[26] This ongoing evaluation of the proxy process leads us to consider changes whenever it appears that the process can be improved to better promote the interests of investors, the efficient functioning of the capital markets, and the health of capital formation.

In 2003, the Commission directed the Division of Corporation Finance to review the proxy rules regarding procedures for the election of corporate directors and provide the Commission with recommendations regarding possible changes to the proxy rules. Following the Division's review of the proxy rules, the Commission proposed a comprehensive new set of rules, based on the Division's recommendations, which would have governed shareholder director nominations that are not control-related.[27] In connection with the rulemaking concerning shareholder director nominations, the Commission held a roundtable regarding the topic of shareholder director nominations generally, and more specifically, the shareholder director nominations release.[28] The Commission also proposed and adopted a new set of disclosure standards concerning director nominations and communications between shareholders and companies.[29]

More recently, the Commission held three roundtables in May 2007. This series of roundtables began with a re-examination of the fundamental principles of federalism

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[26] As long ago as 1940, observers noted that "[t]he history of [C]ommission regulation pursuant to authority granted in Section 14 of the Securities Exchange Act has been one of careful expansion based upon experience and demonstrated needs." Sheldon E. Bernstein & Henry G. Fischer, The Regulation of the Solicitation of Proxies: Some Reflections on Corporate Democracy, 7 U. Chi. L. Rev. 226, 228 (1940).

[27] Exchange Act Release 34-48626 (Oct. 14, 2003).

[28] Security Holder Director Nominations Roundtable (March 10, 2004).

[29] Exchange Act Release 34-48825 (Nov. 24, 2003).

that provide the context for our role under Section 14(a) of the Exchange Act. Specifically, the roundtables focused on the relationship between the federal proxy rules and state corporation law,[30] proxy voting mechanics,[31] and the evolution of both binding and non-binding shareholder proposals within the framework of the federal proxy rules.[32]

Roundtable participants argued that, in contrast to the current operation of the federal proxy rules, the federal role should be to facilitate shareholders' exercise of their fundamental state law and company ownership rights to elect the board of directors.[33] Some participants also observed that recent technological developments may provide promising possibilities for additional, complementary means for shareholders to interact and communicate with the management and the board of directors of the company that could be more effective and more efficient.[34] Participants generally agreed that enhanced

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30 Roundtable on the Federal Proxy Rules and State Corporation Law (May 7, 2007). Materials related to the roundtable, including an archived broadcast and a transcript of the roundtable, are available on-line at http://www.sec.gov/spotlight/proxyprocess.htm.

31 Roundtable on Proxy Voting Mechanics (May 24, 2007). Materials related to the roundtable, including an archived broadcast and a transcript of the roundtable, are available on-line at http://www.sec.gov/spotlight/proxyprocess.htm.

32 Roundtable on Proposals of Shareholders (May 25, 2007). Materials related to the roundtable, including an archived broadcast and a transcript of the roundtable, are available on-line at http://www.sec.gov/spotlight/proxyprocess.htm.

33 See, e.g., R. Franklin Balotti, Director, Richards, Layton & Finger, P.A, Transcript of Roundtable on the Federal Proxy Rules and State Corporation Law, May 7, 2007, at 14-17; Leo E. Strine, Jr., Vice Chancellor, Court of Chancery of the State of Delaware, Transcript of Roundtable on the Federal Proxy Rules and State Corporation Law, May 7, 2007, at 18-23; Stanley Keller, Edwards Angell Palmer & Dodge LLP, Transcript of Roundtable on the Federal Proxy Rules and State Corporation Law, May 7, 2007, at 142-143.

34 See, e.g., Stanley Keller, Edwards Angell Palmer & Dodge LLP, Transcript of Roundtable on the Federal Proxy Rules and State Corporation Law, May 7, 2007, at 152-154.

disclosure should accompany any changes the Commission might propose so that shareholders can make fully informed voting decisions.[35]

In light of these issues and developments, the Commission is proposing that the current proxy rules and related disclosure requirements be revised and updated to more effectively serve the essential purpose of facilitating the exercise of shareholders' rights under state law.

II. Proposed Amendments to the Proxy Rules and Related Disclosure Requirements

We are proposing changes to Rule 14a-8 that would facilitate shareholders' exercise of their state law rights to propose bylaw amendments concerning shareholder nominations of directors. Additionally, we are proposing amendments to the proxy rules to make clear that director nominations made pursuant to any such bylaw provisions would be subject to the disclosure requirements currently applicable to proxy contests. These proposed amendments are intended to align the Commission's shareholder proposal rule more closely with the underlying state law rights of shareholders.

As discussed above, in addition to governing the procedure for soliciting proxies, a primary purpose of the federal proxy rules is to provide shareholders with full disclosure of all information for the exercise of their voting rights under state law and the corporation's charter. The amendments we propose today are designed to provide shareholders with additional disclosure to allow for better-informed voting decisions.

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[35] See, e.g., Roberta Romano, Yale Law School, Transcript of Roundtable on the Federal Proxy Rules and State Corporation Law, May 7, 2007, at 26-27; Stephen P. Lamb, Vice Chancellor, Court of Chancery of the State of Delaware, Transcript of Roundtable on the Federal Proxy Rules and State Corporation Law, May 7, 2007, at 123-125.

This additional disclosure is of great importance to informed voting decisions both when shareholders are presented with proposed bylaw amendments and when shareholders are presented with nominees for director submitted under the company's bylaws. As such, we are proposing amendments to Schedule 13G and Schedule 14A that would enhance the disclosure of information about the proponents of bylaw amendments concerning the nomination of directors, about any shareholders that submit director nominees under any adopted bylaw, and about any director nominee that is submitted by a shareholder under such a bylaw.

A. Proposed Amendments Concerning Bylaw Proposals for Shareholder Nominations of Directors

1. Background Regarding the Election Exclusion in Rule 14a-8(i)(8)

Rule 14a-8(i)(8) sets forth one of several substantive bases upon which a company may exclude a shareholder proposal from its proxy materials. Specifically, it provides that a company need not include a proposal that "relates to an election for membership on the company's board of directors or analogous governing body." The purpose of this provision is to prevent the circumvention of other proxy rules that are carefully crafted to ensure that investors receive adequate disclosure and an opportunity to make informed voting decisions in election contests. Last year, the U.S. Court of Appeals for the Second Circuit, in American Federation of State, County and Municipal Employees, Employees Pension Plan v. American International Group, Inc.,[36] held that AIG could not rely on Rule 14a-8(i)(8) to exclude a shareholder bylaw proposal under which the company would be required, under specified circumstances, to include

[36] 462 F.3d 121 (2d Cir. 2006) (AFSCME).

shareholder nominees for director in the company's proxy materials at subsequent meetings.

The effect of the AFSCME decision was to permit both the bylaw proposal and, had the bylaw been adopted, subsequent election contests conducted under it, to be included in the company's proxy materials, but without compliance with the disclosure requirements of Rule 14a-12 solicitations. Because of the importance that we attach to the provision of meaningful disclosure to investors in election contests, we are revisiting the provisions of Rule 14a-8 in light of the AFSCME decision with a proposal that is designed to ensure that this objective is consistently achieved.

Since the AFSCME case was decided last year, the Commission has undertaken a thorough review of the proxy process. That review, including three recent roundtables on the topic, has led us to conclude that the federal proxy rules can be better aligned with shareholders' fundamental state law rights to nominate and elect directors. At the same time, the vindication of these state law rights must be accomplished in a way that accommodates the abiding federal interest in the full and fair disclosure to shareholders of information that is material to a contested election. This is the policy interest, grounded firmly in Section 14 of the Securities Exchange Act of 1934, that underlies the election exclusion of Rule 14a-8(i)(8).

To achieve the mutually reinforcing objectives of vindicating shareholders' state law rights to nominate directors, on the one hand, and ensuring full disclosure in election contests, on the other hand, we are proposing revisions to Rule 14a-8(i)(8) that would permit a shareholder who makes full disclosure in connection with a bylaw proposal for director nomination procedures, including a proposal such as that in the AFSCME case,

to have that proposal included in the company's proxy materials.[37] The basis for the disclosure that we are proposing is the familiar Schedule 13G regime, under which certain passive investors that beneficially own more than 5% of a company's securities, report their ownership of a company's securities. We believe that using this well-understood system of disclosure should reduce compliance costs for companies and shareholders. In addition, because shareholders eligible to file under Schedule 13G must not have acquired or held their securities for the purpose of or with the effect of changing or influencing the control of the company, the opportunity to use Rule 14a-8 to inappropriately circumvent the disclosure and procedural regulations that are intended to apply in contested elections should be minimized.

Under the proposed amendments, if the proponents of a bylaw to establish a procedure for shareholder nominations of directors do not meet both the threshold for required filing on Schedule 13G, and the eligibility requirements to file on Schedule 13G, the proposal could then be excluded from the company's proxy materials under Rule 14a-8(i)(8). In this way, shareholders will be guaranteed the disclosure necessary to evaluate such proposals.

In light of the need for full disclosure where the possibility of control over a company is present, we believe that our decision to link the ability to include a bylaw proposal for director nominations in a company's proxy materials to the 5% threshold set by Section 13(d) of the Exchange Act addresses the basic policy concerns previously articulated by both Congress and the Commission. Moreover, because the proposed expansion of shareholders' ability to submit proposals under Rule 14a-8 would be limited

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[37] See proposed revision to Exchange Act Rule 14a-8(i)(8).

to specific situations in which shareholders would be assured of appropriate disclosure and procedural protections, if the proposal did not meet the eligibility requirements of the amended rule, the Commission's staff would continue to interpret the rule to permit companies to exclude the proposal.

We believe that the amendments we are proposing today, including the amendments to the language of the election exclusion, will provide clarity and certainty in this area. We also believe they will facilitate shareholders' exercise of their state law rights to propose amendments to company bylaws concerning director nominations.

2. Proposed Amendment to Rule 14a-8(i)(8) Concerning Bylaw Amendments on Procedures for Shareholder Nominations of Directors

We are proposing an amendment to Rule 14a-8(i)(8)[38] that would enable shareholders to have their proposals for bylaw amendments regarding the procedures for nominating directors included in the company's proxy materials. Such a bylaw proposal would be required to be included in the company's proxy materials if:

- The shareholder (or group of shareholders) that submits the proposal is eligible to file a Schedule 13G and files a Schedule 13G that includes specified public disclosures regarding its background and its interactions with the company;[39]
- The proposal is submitted by a shareholder (or group of shareholders) that has

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38 See proposed revision to paragraph (i)(8) of Exchange Act Rule 14a-8.

39 The eligibility to file a Schedule 13G generally is available only for persons who have acquired and continue to hold the securities beneficially owned without "a purpose or effect of changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect." See Rule 13d-1(e). Although proposing a bylaw amendment pursuant to proposed Rule 14a-8(i)(8) would not on its own eliminate the ability to file a Schedule 13G, a determination of whether a proposing shareholder is eligible to file a Schedule 13G will continue to be based on the specific facts and circumstances accompanying the activities of the proposing shareholder. See Release No. 34-39538 (Jan. 12, 1998) [63 FR 2854].

continuously beneficially owned more than 5% of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date the shareholder submits the proposal;[40] and

- The proposal otherwise satisfies the requirements of Rule 14a-8.[41]

As amended, Rule 14a-8 would allow proponents of bylaw proposals to offer shareholder nomination procedures as they see fit. The only substantive limitations on such procedures would be those imposed by state law or the company's charter and bylaws. For example, the procedure could specify a minimum level of share ownership for those making director nominations that would be included in the company's proxy materials; it could specify the number of director slots subject to the procedure; or it could prescribe a method for the allocation of any costs – so long as both the form and substance of any such requirements were consistent with applicable state law and the company's charter and existing bylaw provisions. Likewise, the voting threshold required in order to adopt the bylaw would be determined by the thresholds set forth by state law or in the company's charter and bylaws with respect to the adoption of bylaws or bylaw amendments.[42]

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[40] The one-year holding requirement would apply individually to each member of a group that is aggregating its security holdings to make a proposal.

[41] To require a company to include the proposal in its proxy materials, the proposal would have to satisfy the procedural requirements of Exchange Act Rule 14a-8 and not fall within one of the other substantive bases for exclusion included in Exchange Act Rule 14a-8.

[42] In the event the charter or bylaws are silent as to the voting threshold required, a company and its shareholders should look to the governing state corporation law. The staff of the Commission would not become involved in determining what this threshold is or whether it had been achieved. Interpretation and enforcement of any bylaw provision setting forth a procedure for shareholder director nominees to be included in the company's proxy materials would be the province of the appropriate state court since it would be a question of state law, not federal law. The staff of the Commission would not become involved in determining the correct interpretation or application of

The disclosure requirements and anti-fraud provisions of the federal proxy rules would, of course, apply to any solicitation of proxies conducted pursuant to a bylaw provision proposed and approved by shareholders. A shareholder proposal to establish bylaw procedures for shareholder nominations of directors would also be subject to any substantive bases for exclusion currently provided for in Rule 14a-8 that do not relate to an election for membership on the company's board of directors.

Shareholder proposals to amend the company's bylaws to establish a procedure for shareholder nominations of directors by proponents that do not meet the eligibility requirements of the proposed amendment to Rule 14a-8(i)(8) – including the requirements that the shareholder proponents have been more than 5% owners for at least one year and have filed a Schedule 13G – would be subject to exclusion.

We believe that the amendments we are proposing today will not only provide consistency and certainty in this area of Rule 14a-8, but also will provide shareholders the ability to have a greater voice in their company's corporate governance, consistent with their rights under state law.

Request for Comment

- As proposed, a bylaw proposal may be submitted by a shareholder (or group of shareholders) that is eligible to and has filed a Schedule 13G that includes specified public disclosures regarding its background and its interactions with the company, that has continuously held more than 5% of the company's securities for at least one year, and that otherwise satisfies the procedural requirements of Rule 14a-8 (e.g.,

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an adopted bylaw provision. In addition, the staff of the Commission would not become involved in determining whether a bylaw provision was properly adopted.

holding the securities through the date of the annual meeting). Are these disclosure-related requirements for who may submit a proposal, including eligibility to file on Schedule 13G, appropriate? If not, what eligibility requirements and what disclosure regime would be appropriate?

- For example, should the 5% ownership threshold be higher or lower, such as 1%, 3%, or 10%? Is the 5% level a significant barrier to shareholders making such proposals? Does the impediment imposed by this threshold depend on the size of the company? Should the ownership percentage depend on the size of the company? For example, should it be 1% for large accelerated filers, 3% for accelerated filers and 5% for all others? Should an ownership threshold be applicable at all?
- If the eligibility requirement should be different from 5%, should we nonetheless require the filing of a Schedule 13G or otherwise require disclosure equivalent to a Schedule 13G?
- The proposed one-year holding requirement is consistent with the existing holding period in Rule 14a-8(b)(1) to submit a shareholder proposal. Is it appropriate to limit use of the proposed rules to shareholder proponents that have held their securities for any length of time? If so, is the one-year period that we have proposed appropriate, or should the holding period be longer (e.g., two years or three years) or shorter than proposed (e.g., six months)? Why? With regard to the one-year holding requirement, is it appropriate to require that each member of a group of shareholders individually satisfy this holding requirement?

- Shareholders of some companies, e.g., open-end management investment companies, are not eligible to file Schedule 13G because the securities of those companies are not defined as "equity securities" for purposes of Rule 13d-1, which governs the filing of Schedule 13G by beneficial owners of equity securities. Should we permit security holders of such companies to file a Schedule 13G for the purpose of relying upon proposed Rule 14a-8(i)(8) if the holder otherwise would be eligible to file a Schedule 13G but for the exclusion of the company's securities from the definition of "eligible security?" If we were to do this, what, if any, amendments would be required to Schedule 13G? Should we instead use an eligibility requirement, other than eligibility to file Schedule 13G, in Rule 14a-8(i)(8) for shareholders of companies whose securities are not "equity securities?"

- If a shareholder acquires shares with the intent to propose a bylaw amendment, could that be deemed to constitute an intent to influence control of the company and thus potentially bar them from filing on 13G? If so, should the Commission provide an exemption that would enable such a shareholder to file on Schedule 13G?
- Proposals to establish a procedure for shareholder nominees would be subject to the existing limit under Rule 14a-8 of 500 words in total for the proposal and supporting statement. Is this existing word limit sufficient for such a proposal? If not, what increased word limit would be appropriate?
- In seeking to form a group of shareholders to satisfy the 5% threshold, shareholders may seek to communicate with one another, thereby triggering application of the

proxy rules. In order not to impose an undue burden on such shareholders, should such communications be exempt from the proxy rules? If so, what should the parameters of any such exemption be?

- Is there any tension between the requirement in Schedule 13G that the securities not be acquired or held for the purpose of changing or influencing control of the company and the desire of the holder of such shares to propose a bylaw amendment seeking to establish procedures for including shareholder-nominated candidates to the board? Does the answer to this question depend on the number of candidates sought to be included in the proposal? If there is tension, should we establish a safe harbor of some kind?

3. Proposed Disclosure Requirements Related to Shareholder Proponents and Nominating Shareholders

a. Overview of Requirements Applicable to Shareholder Proponents

Under the revisions to Rule 14a-8 that we are proposing today, a company would be required to include in its proxy materials bylaw proposals to establish procedures governing shareholder nominations for director so long as the bylaw is consistent with state law and the company's charter and bylaws. To trigger that requirement, an essential element is that the shareholder (or group of shareholders) proposing the bylaw provide disclosure about its own background, intentions, and course of dealings with the company to enable other shareholders to vote intelligently on the proposal. This disclosure requirement is being implemented through proposed amendments to existing Schedule 13G and a new reporting requirement under proposed Item 24 of Regulation 14A.

The already significant role that full disclosure plays in our proxy rules is

rendered still more important when individual shareholders or groups of shareholders, who do not owe a fiduciary duty to the company or to other shareholders, use company assets and resources to propose changes in the company's governing documents. Our proposed amendments would require that certain information concerning proposals that could cause a fundamental change in the relationship between the company and its shareholders be placed before all shareholders entitled to vote. This information, in this context, includes background information on the shareholder proponent that other shareholders ordinarily would find to be important and relevant to a decision when asked to consider a proposed bylaw amendment setting forth procedures for director nominations. In addition, we believe that the use of such a proposal, or the possibility of such a proposal, to influence the company's management or board of directors to take or not to take other related or unrelated actions should be rendered transparent. It would be useful to the company's shareholders to know of any course of dealing between the shareholder proponent and the company when they are deciding how they will vote on the proposal. The additional Schedule 13G and Regulation 14A disclosure requirements that we are proposing address these concerns.

Therefore, we propose to require disclosure on Schedule 13G of significant background information regarding the shareholder proponent, as well as an extensive description of the course of dealing between the shareholder proponent and the company. In addition, we propose to require the company to disclose similar information with regard to the nature and extent of its relationships with the shareholder proponent. We believe that this additional disclosure will provide transparency to shareholders voting on such bylaw amendments.

Specifically, we are proposing that any shareholder (or group of shareholders) that forms any plans or proposals regarding an amendment to the company's bylaws[43] concerning shareholder director nominations, file or amend Schedule 13G to include the following information that would be required by new Item 8A, Item 8B, and Item 8C:

- the shareholder proponent's relationships with the company; and
- additional relevant background information on the shareholder proponent.

The shareholder proponent also would be required to amend its Schedule 13G to update this information as necessary.

To permit reliance on the existing disclosure scheme set forth in Regulation 13D, the proposed amendments to Rule 14a-8 will require shareholder bylaw proposals to be included in a company's proxy materials only if the shareholder proponent is subject to Regulation 13D and eligible to file on Schedule 13G.[44] Regulation 13D, which requires the disclosure of specified information in filings with the Commission on Schedule 13D, applies to persons that directly or indirectly beneficially own more than 5% of a class of voting equity securities registered pursuant to Section 12 of the Exchange Act.[45] Schedule 13G requires less disclosure than Schedule 13D and is available for use by

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43 In this regard, the formation of any plans or proposals regarding an amendment to the company's bylaws would include the submission of a proposal to amend the company's bylaws, and discussions in which the shareholder indicated to management an intent to submit such a proposal or indicated an intent to refrain from submitting such a proposal conditioned on the taking or not taking of an action by the company. See proposed Note to Item 8A of Schedule 13G. In the proposed disclosure requirements, and in the following discussion of those proposed requirements, the term "shareholder proponent" refers to a person that has formed any plans or proposals regarding an amendment to the company's bylaws for a shareholder director nomination procedure; any affiliate, executive officer or agent acting on behalf of that person with respect to the plans or proposals; and anyone acting in concert with, or who has agreed to act in concert with, that person with respect to the plans or proposals. See proposed Item 8A(a) of Schedule 13G.

44 See proposed revisions to paragraph (i)(8) of Rule 14a-8.

45 See 17 CFR 240.13d-1.

persons who beneficially own more than 5% of a class of equity securities registered with the Commission pursuant to Section 12(g) of the Exchange Act and who meet the criteria for one of three types of Schedule 13G filers.[46] Generally, persons, including groups and others who file on Schedule 13G must certify that the securities have not been acquired with the purpose nor with the effect of changing or influencing control of the company.[47]

The proposed amendments to Rule 14a-8 and Schedule 13G, which would enable a shareholder that had provided specified disclosures to propose a bylaw amendment, would apply to a shareholder (or group of shareholders) that:

- has continuously held more than 5% of the company's shares entitled to be voted on the proposal for at least one year as of the date of submitting the proposal;
- was eligible to file a report of beneficial ownership on Schedule 13G; and
- has filed a report of beneficial ownership on Schedule 13G, or an amendment thereto, that includes information about the shareholder or group's background and relationships with the company.

The requirement that a shareholder or group of shareholders hold more than 5% of the company's shares entitled to be voted on the proposal corresponds with the filing requirement on Schedule 13G for beneficial owners of more than 5% of a company's

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[46] Regulation 13D permits filing on Schedule 13G for a specified list of qualified institutional investors who have acquired the securities in the ordinary course of their business and not with the purpose nor the effect of changing or influencing control of the company. See Exchange Act Rule 13d-1(b) (17 CFR 240.13d-1(b)). In addition, persons who are beneficial owners of more than 5% of a class of equity securities may file Schedule 13G, if they have not acquired the securities with the purpose nor with the effect of changing or influencing control of the company, and if they are not directly or indirectly the beneficial owner of 20% or more of the class of securities. See Exchange Act Rule 13d-1(c) (17 CFR 240.13d-1(c)). Finally, certain persons may file a Schedule 13G, in lieu of Schedule 13D, if they qualify under Exchange Act Section 13(d)(6) or Rule 13d-1(d) (17 CFR 240.13d-1(d)).

[47] Reports of beneficial ownership filed on Schedule 13G pursuant to Rule 13d-1(d) are not required to make this certification.

shares, and facilitates the provision of the additional disclosures concerning the shareholder proponent that the amendments to Rule 14a-8 would require. The proposed requirement that the shares be continuously held for at least one year as of the date of submitting the proposal has the additional benefit of ensuring that proposals are made by shareholders with a significant long-term stake in the company, and it is consistent with the current requirement in Rule 14a-8 that has worked well historically. The proposed requirement that the shareholder (or group of shareholders) be eligible to report on Schedule 13G would not only ensure that they are subject to the disclosure requirements of the Williams Act, but also that their shares were not acquired and are not held with the purpose or effect of changing or influencing control of the company.

b. Proposed New Item 8B of Schedule 13G

A shareholder proponent may have a variety of relationships with the company. Because these relationships will often be relevant to an informed decision by other shareholders as to whether to vote in favor of a proposed bylaw amendment, disclosure of information concerning the proposal should include information about such relationships. Accordingly, we are proposing to add a new Item 8B to Schedule 13G concerning the nature and extent of relationships between the shareholder proponent and the company.[48] As proposed, new Item 8B disclosure would include:

- any direct or indirect interest of the shareholder proponent in any contract with the company or any affiliate of the company (including any employment

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[48] In proposed Item 8A of Schedule 13G we define a shareholder proponent to include a person or group that has formed any plans or proposals with regard to the amendment, any affiliate, executive officer, or agent of such shareholder proponent, or anyone acting in concert with, or who has agreed to act in concert with such shareholder proponent with respect to the proposed bylaw amendment.

agreement, collective bargaining agreement, or consulting agreement);

- any pending or threatened litigation in which the shareholder proponent is a party or a material participant, involving the company, any of its officers or directors, or any affiliate of the company; and
- any other material relationship between the shareholder proponent and the company or any affiliate of the company not otherwise disclosed.[49]

Additionally, Item 8B would require a shareholder proponent to describe the following items that occurred during the 12 months prior to the formation of any plans or proposals, or during the pendency of any proposal or nomination:

- any material transaction of the shareholder proponent with the company or any affiliate of the company; and
- any discussion regarding the proposal between the shareholder proponent and a proxy advisory firm.

As proposed, new Item 8B also would require disclosure of any holdings of more than 5% of the securities of any competitor of the company, including the number and percentage of securities owned, as of the date the shareholder proponent first formed a plan or proposal regarding an amendment to the company bylaws in accordance with Rule 14a-8(i)(8).[50] The shareholder proponent also would be required to disclose any material relationship with any competitor other than as a security holder, as of the date the shareholder proponent first formed a plan or proposal regarding an amendment to the

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[49] A material relationship between the proponent and the company or an affiliate of the company may include, but is not limited to, a current or prior employment relationship, including consulting arrangements.

[50] For this purpose, a "competitor" of the company is proposed to include any enterprise with the same Standard Industrial Classification code.

company bylaws in accordance with Rule 14a-8(i)(8).

Finally, new Item 8B would require disclosure regarding any meetings or contacts, including direct or indirect communication by the shareholder proponent, with the management or directors of the company that occurred during the 12-month period prior to the formation of any plans or proposals, or during the pendency of any proposal. The proposed disclosure would provide:

- a description, in reasonable detail, of the content of such direct or indirect communication;
- a description of the action or actions sought to be taken or not taken;
- the date of the communication;
- the person or persons to whom the communication was made;
- whether that communication included any reference to the possibility of such a proposal; and
- any response by the company or its representatives to that communication prior to the date of filing the required disclosure.

To the extent that the shareholder proponent and management or the directors of the company have an ongoing dialogue, the shareholder proponent may describe the frequency of the meetings and the subjects covered at the meetings rather than providing the information separately for each meeting. However, if an event or discussion occurred at a specific meeting that is material to the shareholder proponent's decision to submit a proposal, that meeting would be required to be discussed in detail separately.

c. Proposed New Item 8C of Schedule 13G

When a shareholder (or group of shareholders) proposes a bylaw amendment

regarding the procedures for nominating directors, background information regarding the proposing shareholder often will be relevant to an informed voting decision by the other shareholders. Accordingly, we are proposing to add a new Item 8C to Schedule 13G concerning the following information about the shareholder proponent:

- If the shareholder proponent is not a natural person:
  - The identity of the natural person or persons associated with the entity responsible for the formation of any plans or proposals;
  - The manner in which such person or persons were selected, including a discussion of whether or not the equity holders or other beneficiaries of the shareholder proponent entity played any role in the selection of such person or persons, and whether they played any role in connection with the formation of any plans or proposals;
  - Any fiduciary duty to the equity holders or other beneficiaries of the entity that the person or persons associated with the entity responsible for the formation of any plans or proposals have in forming such plans or proposals;
  - The qualifications and background of such person or persons relevant to the plans or proposals; and
  - Any interests or relationships of such person or persons, and of that entity, that are not shared generally by the other shareholders of the company and that could have influenced the decision by such person or persons and the entity to submit a proposal.
- If the shareholder proponent is a natural person:
  - The qualifications and background of such person or persons relevant to the

plans or proposals; and

- Any interests or relationships of such person or persons that are not shared generally by the other shareholders of the company and that could have influenced the decision by such person or persons to submit a proposal.

With regard to these disclosures, examples of any interests or relationships of the shareholder proponent not shared by other shareholders of the company may include, but are not limited to, contractual arrangements, current or previous employment with the company, employment agreements, consulting agreements, and supplier or customer relationships.

d. Proposed New Item 24 to Schedule 14A

Because a shareholder proponent's relationships with the company often will be relevant to an informed voting decision by other shareholders, background information regarding these relationships should be disclosed not only by the shareholder proponent, but also the company. Accordingly, we are proposing to add a new Item 24 to Schedule 14A to require the disclosure by the company of the nature and extent of the relationship between the shareholder proponent, any affiliate, executive officer or agent of the shareholder proponent, or anyone acting in concert with, or who has agreed to act in concert with, the shareholder proponent with respect to the proposed bylaw amendment submitted in accordance with Rule 14a-8(i)(8), on the one hand, and the company, on the other. Item 24 disclosures would include:

- any direct or indirect interest of the shareholder proponent in any contract with the company or any affiliate of the company (including any employment agreement, collective bargaining agreement, or consulting agreement);

- any pending or threatened litigation in which the shareholder proponent is a party or a material participant, involving the company, any of its officers or directors, or any affiliate of the company; and
- any other material relationship between the shareholder proponent and the company or any affiliate of the company not otherwise disclosed.

Additionally, Item 24 of Schedule 14A would require disclosure of the following with respect to the 12 months prior to the shareholder proponent forming any plans or proposals, or during the pendency of any proposal, regarding an amendment to the company bylaws in accordance with Rule 14a-8(i)(8):

- any material transaction of the shareholder proponent with the company or any affiliate of the company; and
- any meetings or contacts between the shareholder proponent and management or directors of the company.[51]

As with the shareholder proponent requirement, to the extent that the shareholder proponent and management or directors of the company have an ongoing dialogue, the company would be required to merely describe the frequency of and the subjects covered at the meetings, except where an event or discussion occurred that is material to the shareholder proponent's decision to submit a proposal.

For purposes of meeting these proposed disclosure requirements, the company

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[51] As with the corresponding disclosure requirement for shareholder proponents, the proposed disclosures would include: a description, in reasonable detail, of the content of such direct or indirect communication; a description of the action or actions sought to be taken or not taken; the date of the communication; the person or persons to whom the communication was made; whether that communication included any reference to the possibility of such a proposal; and any response by the company or its representatives to that communication prior to the date of filing the required disclosure. See proposed Item 24(d)(2) of Schedule 14A.

would be entitled to rely on the Schedule 13G disclosures of the shareholder proponent concerning the date on which the shareholder proponent formed any plans or proposals regarding an amendment to the company bylaws in accordance with Rule 14a-8(i)(8).

Request for Comment

- The proposed disclosure standards relate to the qualifications of the shareholder proponent, any relationships between the shareholder proponent and the company, and any efforts to influence the decisions of the company's management or board of directors. To assure that the quality of disclosure is sufficient to provide information that is useful to shareholders in making their voting decisions and to limit the potential for boilerplate disclosure, we have proposed that the disclosure standards require specific information concerning these qualifications, relationships, and efforts to influence the company's management or board of directors. Is the proposed level of required disclosure appropriate? Are any of the proposed disclosure requirements unnecessary to shareholders' ability to make an informed voting decision? If so, which specific requirements are not necessary? Should we require substantially similar disclosure from both the proponent and the company as proposed or should the company be allowed to avoid duplicating disclosure relating to the proponent where the company agrees with the disclosure provided? Is any additional disclosure appropriate?
- We solicit comments with respect to any other types of background information regarding a shareholder proponent that should be disclosed in Schedule 13G or Item 24 of Schedule 14A. What other types of information do shareholders need to have about the shareholder proponent, or the shareholder proponent's course of dealing

with the company, when voting on a proposal?

- Would the proposed Schedule 13G disclosure requirements for shareholder proponents be useful to other shareholders in forming their voting decisions? Are the requirements practical? Is any aspect of the proposed disclosure overly burdensome for shareholder proponents to comply with?
- As proposed, shareholder proponents would be required to disclose discussions with a proxy advisory firm prior to submitting a proposal. Is this disclosure requirement appropriate? Why or why not?
- We also propose that companies would be responsible for disclosure regarding their relationships and course of dealing with the shareholder proponent in Item 24 of Schedule 14A. Is this proposed additional disclosure useful? Would any aspect of this disclosure requirement be impractical or overly burdensome?
- As proposed, the disclosures concerning the shareholder proponent and company's relationship must be provided for the 12 months prior to forming any plans or proposals, or during the pendency of any proposals, with regard to an amendment to the company bylaws. Is this the appropriate timeframe? If not, should the timeframe be shorter (e.g., 6 or 9 months) or longer (e.g.,18 or 24 months)? Is any federal holding period requirement appropriate?
- Is the proposed reliance on the existing Schedule 13G framework appropriate? Should we require the type of disclosure found in Schedule 13G, but nevertheless permit a shareholder who holds less than 5% of a company's shares to file a Schedule 13G and to submit bylaw proposals of the type described herein? Is there another

disclosure provision in the federal securities laws with a lesser ownership requirement that would more appropriate upon which to rely?

- Is it appropriate to require any additional disclosure by shareholders and/or the company, beyond what is currently required, in connection with a proposed amendment to the company's bylaws in accordance with proposed Rule 14a-8(i)(8)? Rather, should we require disclosure only when a shareholder actually seeks to nominate a director using a nominating procedure established pursuant to a company's bylaws?

e. Disclosure by Nominating Shareholders – Proposed New Rule 14a-17

One of our primary concerns with using Rule 14a-8 to nominate or establish a procedure for shareholders to nominate a candidate for director is that doing so could result in shareholders being asked to vote on a director nominee without the disclosure that otherwise would be required under the federal proxy rules applicable to elections involving solicitations in opposition to the company's nominees. To address this concern, we are proposing a new Rule 14a-17 that would provide that the existing disclosure requirements for solicitations in opposition (either for a short slate or for a majority of board seats) would apply to nominating shareholders and their nominees under any shareholder nomination procedure.[52] These disclosure requirements are found in Item 4(b), Item 5(b), Item 7, and Item 22(b) of Schedule 14A, and provide basic information regarding the nominating shareholder (or shareholder group) and nominee or nominees, including biography and shareholdings, other interests of the individuals (or

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[52] See proposed Exchange Act Rule 14a-17(c).

group), methods and costs of the solicitation, and other information to enable voting shareholders to make an informed decision.

Because the shareholder nominee would be included in the company's proxy materials, the company would be required to include the disclosure in its proxy statement or, in the Internet version of its proxy statement, to link to a website address where those disclosures would appear. The nominating shareholder would be responsible for providing the information to the company.[53] Further, the nominating shareholder would be required to provide a statement that the shareholder nominee consented to being named in the proxy materials and to serve if elected.[54] Finally, a company would not be required to include a nominating shareholder's nominee in its proxy materials if the shareholder fails to provide the information required by proposed Rule 14a-17(b)-(c).[55]

f. Liability for, and Incorporation by Reference of, Information Provided by the Nominating Shareholder

It is our intent that a shareholder who nominates a director under a bylaw provision concerning the nomination of directors would be liable for any materially false or misleading statements in the disclosure provided to the company and included by the company in its proxy materials. The proposed rules contain express language, modeled on Exchange Act Rule 14a-8(l)(2),[56] providing that the company would not be

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53 Id.

54 See Exchange Act Rule 14a-4(d)(4) (17 CFR 240.14a-4(d)(4)). The rule provides that such consent is required in order for a person to be named in the proxy statement as a bona fide nominee.

55 See proposed Exchange Act Rule 14a-17(d).

56 17 CFR 240.14a-8(l)(2). Exchange Act Rule 14a-8(l)(2) applies with respect to proposals and supporting statements that are submitted by shareholders and then required to be repeated in the company's proxy materials by Exchange Act Rule 14a-8. In this regard, Exchange Act Rule 14a-8

responsible for that disclosure.[57] In addition, it is our intention that any information that is provided to the company for inclusion in its proxy materials by the nominating shareholder and included in the company's proxy statement would not be incorporated by reference into any filing under the Securities Act or the Exchange Act unless the company determines to incorporate that information by reference specifically into that filing.[58] However, to the extent the company does so incorporate that information by reference, we would consider the company's disclosure of that information as the company's own statement for purposes of the anti-fraud and civil liability provisions of the Securities Act or the Exchange Act, as applicable.

g. Filing Requirements

When, in accordance with a shareholder nomination bylaw procedure, a shareholder nominates a candidate for director, the company would be required to file its proxy statement in preliminary rather than definitive form, in the same manner as under the existing proxy rules applicable to proxy contests.[59] This is the same result that would be obtained in a traditional contested election in which the shareholder nominees appeared in a separate proxy statement.

It is possible that either the company or a nominating shareholder (or group of shareholders) may wish to solicit in favor of their nominee or nominees outside the company proxy materials. As in a traditional contested election, it is important that any

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states that "the company is not responsible for the contents of [the shareholder proponent's] proposal or supporting statement."

57 See proposed Exchange Act Rule 14a-17(e).

58 See proposed Exchange Act Rule 14a-17(f).

59 See proposed amendment to Exchange Act Rule 14a-6.

soliciting materials in addition to the proxy statement be filed publicly with the Commission so that such materials are available to all shareholders, to the company, and to the Commission staff for review. Accordingly, where a shareholder or company chooses to solicit outside the company proxy materials, we intend that the existing filing requirements applicable to definitive additional soliciting materials would apply.[60] Under these requirements, all soliciting materials are required to be filed with the Commission in the same form as the materials sent to shareholders no later than the date they are first sent or given to shareholders.[61]

h. Proposed New Rule 14a-17(b)-(c) and Item 25 of Schedule 14A

As noted above, one of the primary concerns with using Rule 14a-8 to establish a procedure for shareholders to nominate directors is that doing so would not provide shareholders with disclosure they otherwise would be given in a proxy contest. In this regard, we note that it is of substantial importance to provide shareholders with clear, transparent disclosure regarding any shareholder or group of shareholders using a nominating procedure established pursuant to a company's bylaws to nominate a candidate for director. Therefore, the additional disclosures that are proposed to be added to Schedule 13G for shareholder proponents of a bylaw amendment concerning shareholder director nominations also would apply to a nominating shareholder under an adopted bylaw. In this regard, we are proposing to add new Rule 14a-17(b), which would require any nominating shareholder to provide to the company the disclosures required by

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60 See Exchange Act Rule 14a-6(b) (17 CFR 240.14a-6(b)) and Exchange Act Rule 14a-12 (17 CFR 240.14a-12).

61 Id.

Item 8A, Item 8B, and Item 8C of Schedule 13G.[62] These disclosures would be required at the time the shareholder forms any plans or proposals with respect to submission of a nominee for director to the company for inclusion in the proxy materials.[63] Immediately after the nominating shareholder provides the company with the disclosure, under Rule 14a-17(c), the company would be required to provide the information on its website or provide a link on its website to a website address where the disclosure would appear. In addition, pursuant to Item 25 of Schedule 14A, the company would be required to include the disclosure in its proxy statement or provide a link to a website address where the disclosure would appear in the Internet version of its proxy statement. Under Rule 14a-17(d), if a nominating shareholder fails to provide the required information, the shareholder's nominee will not be required to be included in the company's proxy materials.

Request for Comment

- As proposed, a nominating shareholder would be required to provide to the company, for inclusion in the company's proxy materials, disclosure responsive to Item 8A, Item 8B, and Item 8C of Schedule 13G, as well as Item 4(b), Item 5(b), Item 7, and Item 22(b) of Schedule 14A, as applicable. Is this the appropriate type and amount of disclosure for a nomination under a shareholder nomination procedure? If not, what

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62 In this regard, it is important to note that a shareholder director nomination bylaw may establish any ownership threshold for nominating a director. Because we believe that the disclosure required by these items is important for an informed voting decision by shareholders, we are proposing new Item 25 of Schedule 14A in order to provide complete disclosure regarding nominating shareholders utilizing procedures established in bylaw amendments that allow for nominations by shareholders.

63 We have proposed a Note to Exchange Act Rule 14a-17(a) stating that the formation of any plans or proposals includes instances where the shareholder has indicated an intent to management to submit a nomination or has indicated an intent to management to refrain from submitting a nomination conditioned on the taking or not taking of a corporate action.

disclosure requirement would be appropriate? Is the timing requirement for providing this disclosure appropriate? If not, when should such disclosures be provided?

- Is it appropriate for the disclosure to be provided to the company for inclusion on its website and in its proxy materials, or should the shareholder instead be responsible for filing the information provided that they beneficially own more than 5% of the company's securities entitled to be voted and are eligible to file on Schedule 13G?
- Does the proposal make sufficiently clear that the nominating shareholder would be responsible for the information submitted to the company? Should the proposal include language addressing a company's responsibility for including statements made by the shareholder that it knows are not accurate?
- Should information provided by a nominating shareholder be deemed incorporated by reference into Securities Act or Exchange Act filings? If so, why?
- Should companies that receive a nomination for director from a shareholder be required to file their proxy statement in preliminary form, as is proposed? If not, why would it be appropriate for companies to file directly in definitive form?
- Should solicitations in favor of or against a nominee for director, by either the company or the shareholder, be filed as definitive additional soliciting materials on the date of first use, as is proposed? If not, how should such materials be filed?
- As proposed, a nominating shareholder would be required to provide the information required by Item 8A, Item 8B and Item 8C of Schedule 13G to the company for inclusion on the company's website and in its proxy. Would it be appropriate to add a disclosure requirement on Form 8-K that would apply where a company does not

maintain a website? Would it be appropriate to allow a company to choose between website disclosure and Form 8-K disclosure even where a company maintains a website? Why or why not?

- Is there disclosure other than that proposed concerning shareholder nominees that would be material to investors? If so, what are those disclosures and why would they be material? For example, should we require disclosure regarding the relationship between the nominating shareholder and shareholder nominee? If so, what disclosures would be appropriate and useful to shareholders?

B. Electronic Shareholder Forums

1. Background

The Commission's recent series of roundtables on the proxy process considered, among other issues, the role of technology in facilitating communications not only between shareholders and companies, but also among shareholders. Given the opportunities for collaborative discussion afforded by the Internet and related technological innovations, the proxy mechanism by comparison offers limited opportunities – usually only the annual meeting – for shareholders to provide advice to management. Accordingly, the proxy system may not be the only, or the most efficient, means of shareholder communication with management on purely advisory matters.

Alternatives or supplements to the proxy machinery that exploit the advantages of telecommunications technology have been suggested that could offer shareholders other means to communicate, including with regard to resolutions such as those typically submitted as non-binding proposals under Rule 14a-8. For example, an online forum, restricted to shareholders of the company whose anonymity is protected through

encrypted unique identifiers, could offer the opportunity for shareholders to discuss among themselves the subjects that most concern them, and which today are considered – if at all – only indirectly through the proxy process. Shareholder expressions of interest on particular suggested actions, tabulated based on their ownership interest, could be determined on a real-time basis. The company could use the form to provide information, such as a copy of press release information regarding record dates and expression of views by the company. Moreover, the opportunity for this enhanced level of shareholder participation could be extended throughout the year, rather than only at annual meetings. From the company's standpoint, such a shareholder forum could provide more frequent information about the interests and concerns of investors.

We are not seeking, through the proxy rules or otherwise, to devise an approved regulatory version of an electronic shareholder forum. Myriad uses of the Internet to facilitate shareholder communication are already well under way, and as technology continues to develop, individuals and entities will find increasingly creative ways to address the challenges they face in presenting proposals to companies, determining support for proposals among other shareholders, conducting referenda on non-binding proposals, and organizing online petitions to management, among other potential activities. The Commission strongly encourages these developments. Rather than prescribe any specific approach to an online shareholder forum in the proxy rules, the proposed amendment is designed to remove any unnecessary real and perceived impediments to continued private sector experimentation and use of the Internet for communication among shareholders, and between shareholders and their company.

2. Proposed Amendment to Facilitate the Use of Electronic Shareholder Forums

We propose to facilitate greater online interaction among shareholders by removing obstacles in the current rules to the use of an electronic shareholder forum. To facilitate the establishment of such forums, which can be conducted and maintained in any number of ways, we propose to clarify that a company is not liable for independent statements by shareholders on a company's electronic shareholder forum. In addition, in order to enhance the efficacy of the forum, we propose to address any ambiguity concerning whether use of an electronic shareholder forum could constitute a proxy solicitation.

Proposed Rule 14a-18(a) would make clear that both companies and shareholders are entitled to establish and maintain an electronic shareholder forum under the federal securities laws, provided that the forum is conducted in compliance with the federal securities laws, applicable state law, and the company's charter and bylaws. While the proxy rules currently do not prohibit or delimit such activities, neither were they written in contemplation of the wide-ranging communications potential of the Internet. By addressing specific concerns relating to the use of the electronic shareholder forum in the proposed rule, we are seeking to remove legal ambiguity that might inhibit shareholders and companies from energetic exploitation of the potential of communications technology, and to encourage shareholders and companies to take advantage of this technology to facilitate better communication among shareholders and between shareholders and companies.

Liability for statements made on an electronic shareholder forum is one area of concern for companies and shareholders when making the decision whether to establish such a forum. To alleviate this concern, we propose to clarify in Rule 14a-18(b) that, for

simply establishing, maintaining, or operating the electronic shareholder forum, a company or shareholder would not be liable under the federal securities laws for any statement or information provided by another person to the forum. The intent is for the person establishing, maintaining, or operating an electronic shareholder forum to be protected from liability in a similar way as the federal telecommunications laws protect an interactive computer service.[64]

Persons providing information to or making statements on the electronic shareholder forum would remain liable for the content of those communications under traditional liability theories in the federal securities laws, such as those in Section 17(a) of the Securities Act and Section 10(b), Rule 10b-5, and Section 20(e) of the Exchange Act. The prohibitions in the anti-fraud laws against primary or secondary participation in fraud, deception, or manipulation would continue to apply to those supplying information to the site, and claims would not face any additional obstacle because of the new rule. Any other applicable federal or state law would also continue to apply to a person providing information or statements to an electronic shareholder forum.

An additional concern regarding the use of an electronic shareholder forum relates to the broad general application of our proxy rules under Section 14(a) of the Exchange Act. Under the proxy rules, a solicitation encompasses any request for a proxy, any request to execute or revoke a proxy, and the furnishing of a form of proxy or other communication under circumstances reasonably calculated to result in the procurement,

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64 See Section 230(c)(1) of the Telecommunications Act of 1996 (47 U.S.C. § 230(c)(1)) ("No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.").

withholding, or revocation of a proxy.[65] This broad definition of solicitation limits the kinds of activities that a shareholder or the company may undertake in a public forum when discussing issues that may be voted on at the company's annual or special meeting.

To facilitate greater use of the electronic shareholder forum concept and to encourage more robust communication with the company and among shareholders, we propose to exempt any solicitation in an electronic shareholder forum by or on behalf of any person who does not seek directly or indirectly, either on its own or another's behalf, the power to act as proxy for a shareholder and does not furnish or otherwise request, or act on behalf of a person who furnishes or requests, a form or revocation, abstention, consent or authorization.[66] The solicitation would be exempt so long as it occurs more than 60 days prior to the date announced by the company for its annual or special meeting of shareholders or if the company announces the meeting less than 60 days before the meeting date the solicitation may not occur more than two days following the company's announcement.[67] We further propose to clarify in proposed Rule 14a-18(c) that a person who participates in an electronic shareholder forum and makes solicitations in reliance on the proposed exemption would continue to be eligible to solicit proxies outside of Rule 14a-2(b)(6) provided that any such solicitation complies with Regulation 14A.

The purpose of these amendments is to encourage the free flow of information, ideas, and opinions in an electronic shareholder forum. It is not the purpose of these

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65 See Exchange Act Rule 14a-1(l) (17 CFR 240.14a-1(l)).

66 See proposed Exchange Act Rule 14a-2(b)(6).

67 The proposal would not affect the application of any other exemptions under Regulation 14A. For example, a person could rely on the other applicable exemptions in Exchange Act Rule 14a-2 (17 CFR 240.14a-2).

amendments to allow such a forum to be used to circumvent the proxy or anti-fraud rules. We believe that there is less risk of an electronic shareholder forum being used for proxy solicitation more than 60 days prior to an annual or special meeting and therefore have proposed a 60-day limitation.[68] Communications within an electronic shareholder forum that occur less than 60 days prior to the annual or special meeting, or more than two days after the announcement of the meeting, would continue to be treated as any other communication would be treated today, and would be required to comply with our proxy rules if they are a solicitation unless they fall within an existing exemption. In addition, we propose to limit the exemption to persons who do not seek to act as a proxy for a shareholder or request a form of proxy from them.

We propose limitations to the exemption because, though we believe that an electronic shareholder forum should provide a medium for, among other things, open discussion, debate, and the conduct of referenda, we believe that the solicitation of proxies for an upcoming meeting is more appropriate under the protections of our proxy rules. Any proxies obtained prior to the application of our proxy rules would not benefit from the full and fair disclosure required under the regulations.

Request for Comment

- Our proposals are intended to provide a company or its shareholders with the flexibility under the federal securities laws to establish an electronic shareholder forum that permits interaction among shareholders and between shareholders and the

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[68] 60 days corresponds with the maximum amount of time prior to a scheduled meeting that the company may fix the record date for determining the stockholders entitled to notice of or to vote at a meeting under the Delaware Code. See Del. Code title 8, §213 (2007).

company's management or board of directors, and permits the operator of the electronic shareholder forum to provide for non-binding referenda votes of forum participants. Do our proposals provide this flexibility? Are there additional steps that are necessary to assure that the federal securities laws do not hinder the development of these electronic shareholder forums?

- We propose to amend Regulation 14A to encourage the development of electronic shareholder forums that could be used by companies to better communicate with shareholders and by shareholders to better communicate both with their companies and among themselves. In addition, the electronic shareholder forum concept could offer shareholders a means of advancing referenda that might otherwise be proposed as non-binding shareholder proposals under Rule 14a-8. Is this appropriate and, if so, how can we further encourage the development of electronic shareholder forums?
- As proposed, the new rules would allow companies and shareholders to develop electronic shareholder forums as they see fit, as long as the forums are conducted in compliance with Section 14(a) of the Exchange Act, other federal laws, applicable state law, and the company's charter and bylaw provisions. Should we be more prescriptive in our approach, such as by providing direction or guidance relating to whether a forum is available for non-binding referenda, whether access is limited to shareholders, the frequency with which shareholder records are updated for purposes of enabling participation, or whether the forum assures the anonymity of shareholders who access it?
- As proposed, we make clear that a company or shareholder that establishes, maintains, or operates a forum is not liable for any statements or information

provided by another person. Does the proposed rule adequately address the liability concerns that might face sponsors of and participants in an electronic shareholder forum?

- In order to encourage use of electronic shareholder forums, we are proposing an exemption for solicitations on an electronic shareholder forum. As proposed, solicitations that do not seek to act as a proxy for a shareholder or request a form of proxy from them and occur more than 60 days prior to an annual or special meeting (or within two days of the announcement of the meeting) are exempt under the proxy rules. Is it appropriate to provide this exemption from regulation for communications on an electronic shareholder forum? Should the exemption apply more broadly to all communications? Would it be possible to conduct an effective proxy solicitation on the forum despite the limitations? Is the 60-day limitation sufficiently long to protect shareholders from unregulated solicitations? Should the time period be shortened (e.g., 30 or 35 days) or lengthened (e.g., 75 or 90 days)? Is there a better alternative that would encourage free and open communication on electronic shareholder forums, but limit the use of the forums as a way to solicit proxies without providing the full and fair disclosure required in our proxy rules?
- As proposed, we have provided no guidance on what should happen to the communications and data on the forum within the 60-day period prior to the annual or special meeting. Solicitations that remain posted on the forum that were exempt under proposed Rule 14a-2(b)(6) may no longer be exempt. Should we require that the electronic shareholder forums be taken down within 60 days of a scheduled meeting? Alternatively, if the forum continues to run, should shareholders who

continue making communications on the forum file any communications that are solicitations in compliance with Regulation 14A? Should those shareholders be required to file any solicitations on the forum that occurred more than 60 days prior to the meeting? How would the forums be policed to ensure that the responsible parties are properly filing?

- What would be the appropriate use of an electronic shareholder forum with regard to a bylaw proposal, as contemplated in this release? For example, should shareholders be able to use a forum to solicit other shareholders to form a 5% group in order to submit a bylaw proposal?

C. Request for Comment on Proposals Generally

1. Bylaw Amendments Concerning Non-Binding Shareholder Proposals

Several participants in the Commission's recent proxy roundtables expressed concern that by requiring the inclusion of non-binding shareholder proposals in company proxy materials, Rule 14a-8 expands rather than vindicates the framework of shareholder rights in state corporate law.[69] A number of other participants in the roundtables indicated, however, that non-binding shareholder proposals have a useful role in the proxy process and in corporate governance.[70] Based, in part, on these and other views expressed by participants at the roundtables, we are requesting comment as to whether

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69 See, e.g., Leo E. Strine, Jr., Vice Chancellor, Court of Chancery of the State of Delaware, Transcript of Roundtable on the Federal Proxy Rules and State Corporation Law, May 7, 2007, at 18-23.

70 See, e.g., Ted White, Strategic Advisor, Knight Vinke Asset Management, Transcript of Roundtable on the Federal Proxy Rules and State Corporation Law, May 7, 2007, at 94-95; Damon A. Silvers, Associate General Counsel, AFL-CIO, Transcript of Roundtable on Proposals of Shareholders, May 25, 2007, at 8-11. See also Form Letters B and C, available on the Commission's Web site at www.sec.gov.

the Commission should adopt rules that would enable shareholders, if they choose to do so, to determine the particular approach they wish to follow with regard to non-binding proposals. Such an approach was proposed once before by the Commission but ultimately was not adopted;[71] however, in light of developments in the last 25 years that may have diminished the concerns about shareholders' ability to act as a group, which formed the basis of arguments for a mandated federal approach, we are again requesting comment on this approach. These developments include the increasing importance of institutional investors in contemporary capital markets, the significant role of private organizations that collect and disseminate information to institutional investors concerning corporate governance issues, the prevalence of widely published voting guidelines for market participants of all sizes, and the significantly enhanced opportunities for collaborative discussion and decision-making afforded by the Internet and related technological innovations.

We therefore are requesting comment on whether a company or its shareholders should have the ability to propose and adopt bylaws that would establish the procedures

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[71] In 1982, during a comprehensive review of the shareholder proposal process, the Commission proposed permitting companies and shareholders to formulate and adopt procedures for including shareholder proposals in the company's proxy materials. See Release No. 34-19135 (Oct. 14, 1982) [47 FR 47420]. Under the proposed approach, the Commission would have continued to have a rule that specified the procedures governing the submission and inclusion of shareholder proposals, but would have adopted a supplemental rule to permit a company and its shareholders to adopt a plan providing their own procedures to govern the process. The proposed approach would have allowed a company's board of directors and shareholders, rather than the Commission or its staff, to make judgments as to what proposals should be included in the company's proxy materials at the company's expense. The plan could have been proposed by either the company's board of directors or shareholders, and subject to certain minimum requirements, the provisions of the plan could have been as liberal or restrictive as shareholders were willing to approve. In 1983, the Commission adopted final rules amending Exchange Act Rule 14a-8, but left the Exchange Act Rule 14a-8 framework intact, concluding that, at that time, a federal framework for including shareholder proposals in company proxy materials was in the best interests of shareholders and issuers. See Release No. 34-20091 (Aug. 16, 1983) [48 FR 38218].

that the company will follow for including non-binding proposals in the company's proxy materials. In addition to general comment, we encourage commenters to address the following specific questions:

- Would it be appropriate to require the shareholder (or group of shareholders) that submits the proposal to file a Schedule 13G that includes specified public disclosures regarding its background and its interactions with the company, that corresponds to the proposed disclosure requirements for shareholder proponents of bylaw amendments concerning shareholder director nominations?
- Should a shareholder (or group of shareholders) proposing such a bylaw amendment be required to have continuously held a certain percentage of the company's securities entitled to be voted on the proposal at the meeting? What would the appropriate percentage be? Should a holding period be required? If so, how long should the holding period be?
- Should a proposal be required to otherwise satisfy the requirements of Rule 14a-8 (e.g., the proposal would have to satisfy the procedural requirements of Rule 14a-8 and not fall within one of the other substantive bases for exclusion included in Rule 14a-8)?
- Under current Rule 14a-8, all shareholder proposals and supporting statements are limited to 500 words in total. Should the word limit be different for shareholder submissions of proposed bylaw amendments to establish procedures for non-binding proposals? If so, should the word limit be increased to 3,000 words in order to permit a more thorough description of the proposed procedural framework and in accordance with the approximate word count in current Rule 14a-8? If not 3,000, should the

word limit be higher or lower than 3,000 (e.g., 1,000, 2,000, 4,000)?

- Should the proxy statement for the shareholder vote be required to explain that approval of the bylaw would establish procedures that would govern in all circumstances with regard to shareholder requests for the inclusion of non-binding proposals? Should the bylaw itself be required to provide this explanation?
- Would it be appropriate for the Commission to provide that the substance of the procedure for non-binding proposals contained in a bylaw amendment would not be defined or limited by Rule 14a-8, but rather by the applicable provisions of state law and the company's charter and bylaws? For example, the Commission could provide that the framework could be more permissive or more restrictive than the requirements of existing Rule 14a-8 (e.g., the framework could specify different eligibility requirements than provided in current Rule 14a-8, different subject-matter criteria, different time periods for submitting non-binding proposals to the company, or different resubmission thresholds; or it could specify that non-binding proposals would not be eligible for inclusion in the company's proxy materials, or alternatively that all non-binding proposals would be included in the company's proxy materials without restriction, if these approaches were consistent with state law and the company's charter and bylaws).
- To ensure 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, should any rule adopted include a specific requirement that, to be included in a company's proxy materials, a shareholder proposal establishing bylaw procedures for non-binding proposals would have to be binding on the company under state law if

approved by shareholders?

- Would it be appropriate for the Commission to provide that, if shareholders approve a bylaw procedure for non-binding proposals, interpretation and enforcement of that procedure would be the province of the appropriate state court? Under such an approach, the Commission and its staff would not resolve such questions. Should the Commission or its staff instead become involved in interpreting or enforcing the company's bylaws? Is there any reasonably foreseeable situation where intervention by the Commission or its staff would be critical to the proper functioning of bylaw procedures for non-binding proposals? In addition, we solicit comments with respect to the practicality and feasibility of relying on state courts as the arbiter of disagreements between companies and shareholder proponents over the company's bylaws as they apply to non-binding shareholder resolutions.
- Should the Commission encourage the proponent of any bylaw procedure governing non-binding proposals to include in the procedure a fair and efficient mechanism for resolving any disagreements between the company and the shareholder as to the bases for inclusion or exclusion of a proposal?
- Should the Commission specify that, even after the shareholders approve a bylaw procedure for non-binding shareholder proposals, a shareholder meeting the proposed eligibility requirements could later submit another bylaw procedure that removes or amends the previously-adopted non-binding procedure and that bylaw would not generally be excludable by a company under Rule 14a-8(i)(2) or Rule 14a-8(i)(3)?
- How might shareholders' overall ability to communicate with management and other shareholders be improved or diminished if shareholders were able to choose different

procedures for non-binding proposals than those currently in Rule 14a-8? Are there additional or different procedures that the Commission should require, encourage or seek to prevent?

With respect to subjects and procedures for shareholder votes that are specified by the corporation's governing documents, most state corporation laws provide that a corporation's charter or bylaws can specify the types of binding or non-binding proposals that are permitted to be brought before the shareholders for a vote at an annual or special meeting. Further, most state corporation laws permit a company's board of directors to adopt, amend, or repeal bylaws without a shareholder vote. Because a company's board of directors could adopt a bylaw establishing procedures for the consideration of non-binding proposals at meetings of shareholders, we have not included in the above request for comment any discussion of a board of directors adopting bylaws that would limit the ability of shareholders to raise non-binding proposals for a vote at meetings of shareholders. To the extent a company had in place a bylaw under which non-binding shareholder proposals were not permitted to be raised at meetings of shareholders, a company may be able to look to Rule 14a-8(i)(1) with regard to the exclusion of such proposals. Such ability to exclude the proposals would, of course, be reliant on the bylaw's compliance with applicable state law and the company's governing documents. In light of the board's power to adopt such a bylaw under state law, please consider the following specific requests for comment:

- Should the board of directors be able to adopt a bylaw setting up a separate procedure for non-binding shareholder proposals and be able, under our proxy rules, to follow that procedure in lieu of Rule 14a-8 with regard to non-binding proposals? Should

such procedures be deemed to comply with Rule 14a-8 if the bylaw is not approved by a shareholder vote, provided that state law authorizes the adoption of such a bylaw without a shareholder vote?

- Should a bylaw proposed and adopted by a company prior to becoming subject to Exchange Act Section 14(a) be deemed to comply with Rule 14a-8 once the company became subject to Exchange Act Section 14(a)? If so, should such companies be required to provide disclosure regarding the rights of shareholders with respect to the submission of non-binding shareholder proposals for inclusion in the company's proxy materials as part of the description of its equity securities in its Securities Act and Exchange Act registration statements. If not, should companies instead be required to submit the bylaw to a shareholder vote once the company becomes public and subject to Section 14(a) of the Exchange Act, either at a special meeting or an annual meeting?
- Is there a concern that affiliates of a company could obtain a sufficient number of votes to adopt a bylaw without obtaining a vote of the non-affiliates? Should the federal proxy rules further restrict the operation of bylaw provisions that are otherwise permissible under state law by requiring, for example, that once a company is subject to Section 14(a), the shareholders who are not affiliates of the company ratify the bylaw, or that the bylaw procedure be periodically re-approved by shareholders after its initial approval? Does the fact that the company's bylaws can generally be revised or repealed at any time after adoption mitigate the need for such extraordinary procedures?

- Should the Commission adopt a provision to enable companies to follow an electronic petition model for non-binding shareholder proposals in lieu of Rule 14a-8? Such a model could include some or all of the following parameters:
    - Electronic petitions would be submitted by shareholders and posted by the company on the electronic proxy notice and access website;
    - Only shareholders as of the record date could sign the electronic petition through the close of the applicable shareholder meeting;
    - Execution of the electronic petition would occur through the same control numbers used to vote under electronic proxy;
    - Communications would be subject to Rule 14a-9, but otherwise would be minimally restricted by the proxy rules;
    - Results of petitions would be reported as a percentage of total outstanding shares;
    - The decision to sign or not to sign an electronic petition would not be considered a shareholder vote;
    - Petitions would follow current Rule 14a-8 guidelines (e.g., would be limited to 500 words) and require the identification of the shareholder-sponsor;
    - Companies would be permitted to post a response to each petition; and
    - Petition sponsors could use an "electronic-only" solicitation approach with no obligation to send paper copies.
- Are there additional changes to Rule 14a-8 that would improve operation of the rule? If so, what changes would be appropriate and why? For example, should the Commission amend the rule to change the existing ownership threshold to submit

other kinds of shareholder proposals? If so, what should the threshold be? Would a higher ownership threshold, such as $4,000 or $10,000, be appropriate? Should the Commission amend the rule 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? If so, what should the resubmission thresholds be – 10%, 15%, 20%? Are there any areas of Rule 14a-8 in which changes or clarifications should be made (e.g., Rule 14a-8(i)(7) and its application with respect to proposals that may involve significant social policy issues)? If so, what changes or clarifications are necessary?

- Currently, Item 4 in Part I of Form 10-K and Form 10-KSB and Item 4 in Part II of Form 10-Q and 10-QSB require a company to disclose information regarding the submission of matters to a vote of security holders. The required disclosure includes a description of each matter voted upon at the meeting and the number of votes cast for, against, or withheld, as well as the number of abstentions and broker non-votes as to each such matter. In the interest of increased transparency, should additional disclosure be provided with regard to the voting results for non-binding shareholder proposals? For example, should the company be required to disclose votes for non-binding shareholder proposals as a percentage of the total outstanding securities entitled to vote on the proposal? Or as a percentage of the total votes cast? Would shareholders benefit from receiving this type of information?

2. Other Requests for Comment

- Would adoption of the proposed rules conflict with any state law, federal law, or rule of a national securities exchange or national securities association? To the extent you

indicate that the proposed rules would conflict with any of these provisions, please be specific in your discussion of those provisions that you believe would be violated.

- As the Commission staff noted in its July 15, 2003 Staff Report entitled "Review of the Proxy Process Regarding the Nomination and Election of Directors,"[72] the cost to shareholders of soliciting proxies in opposition to the company's solicitation has been considered to be prohibitive and, as such, has been a key component of arguments in favor of increasing the opportunity for the inclusion of shareholder nominees for director in the company's proxy materials. Significant recent technological advances appear to have the potential to substantially reduce the costs of such a proxy solicitation, including the Commission's recently adopted "E-Proxy" rules[73] and the electronic shareholder forum discussed in this release. Will these technological advances reduce the costs of proxy solicitations for both companies and those that solicit in opposition to a company?
- Should bylaw proposals establishing a shareholder director nomination procedure be subject to a different resubmission standard than other Rule 14a-8 proposals? If so, what standard would be appropriate and why?
- As proposed, the federal proxy rules would not establish a threshold for the votes required to adopt a bylaw procedure. This is because the voting thresholds for the adoption of bylaw amendments are established by state law and a company's governing documents. Is this reliance on state law and the company's governing

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72 See Staff Report: Review of the Proxy Process Regarding the Nomination and Election of Directors, Appendix A (Summary of Comments in Response to the Commission's Solicitation of Public Views Regarding Possible Changes to the Proxy Rules) (July 15, 2003).

73 Release No. 34-55146 (Jan. 22, 2007) [72 FR 4148].

documents appropriate? Should the proxy rules establish a different federal standard for the required vote to adopt a bylaw procedure, such as the majority of shares present in person or represented by proxy and entitled to vote on the proposal, or a supermajority vote?

- Our proposals assume that the existing exemptions for solicitations are sufficient to include soliciting activities of shareholders that are seeking to form a more than 5% group. Accordingly, the release does not address any such soliciting activities or propose any new rules in this regard. Is our assumption that the existing exemptions are sufficient for the purpose of forming a shareholder group to submit a bylaw proposal correct? If not, what would be the appropriate scope of any new exemption or amendment to an existing exemption?
- Is there an alternative to the proposal regarding shareholder director nomination bylaws that would provide a preferable method by which shareholders could establish procedures to place their candidates for director in the company proxy materials? For example, should shareholders be able to propose a bylaw amendment only where there has been a majority withhold vote for a specified director or directors, and the director or directors do not resign? If so, what ownership threshold would be appropriate in those circumstances?
- In light of developments that reduce the costs of proxy solicitations by shareholder proponents, such as the adoption of "E-proxy," general advances in communication technology, the proposals concerning electronic shareholder forums, and, in some instances the ability of shareholders to request and receive reimbursement for election contest expenses, is there an alternative to the proposal regarding shareholder director

nomination bylaws that would enable shareholders to conduct election contests without incurring the expense of a traditional contest and without being placed on the company ballot? For example, should our proxy rules be amended to permit pure electronic solicitation? Should we amend Rule 14a-2(b)(1) to enable shareholders to solicit a greater number of other shareholders than currently is permitted under the rule (the rule limits the number solicited to ten) without being required to furnish a proxy statement?

- Would additional amendments to the system for reporting beneficial and other ownership interests in securities be appropriate? If so, what additional amendments would be appropriate and why? Are there areas where additional disclosures would be appropriate (e.g., with regard to the exercise of voting rights without an economic interest in the underlying security)? Are there ways in which the system could be simplified (e.g., by combining the reports required to report beneficial and other ownership interests)?

III. General Request for Comment

We request and encourage any interested person to submit comments regarding:

- the proposed amendments that are the subject of this release;
- additional or different changes; or
- other matters that may have an effect on the proposals contained in this release.

We request comment from the point of view of companies, investors and other market participants. With regard to any comments, we note that such comments are of

great assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

IV. Paperwork Reduction Act

A. Background

The proposed amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995, the PRA.[74] We are submitting the proposal to the Office of Management and Budget for review in accordance with the PRA.[75] The titles for the collections of information are:

(1) "Proxy Statements - Regulation 14A (Commission Rules 14a-1 through 14a-15 and Schedule 14A)" (OMB Control No. 3235-0059); and

(2) "Securities Ownership - Regulation 13D and 13G (Commission Rules 13d-1 through 13d-7 and Schedules 13D and 13G)" (OMB Control No. 3235-0145).

These regulations were adopted pursuant to the Exchange Act and the Investment Company Act of 1940 and set forth the disclosure requirements for securities ownership reports filed by investors and proxy statements filed by companies to help investors make informed voting or investing decisions.

The hours and costs associated with preparing and filing the disclosure, filing the forms and schedules and retaining records required by these regulations constitute reporting and cost burdens imposed by each collection of information. An agency may

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74 44 U.S.C. 3501 et seq.

75 44 U.S.C. 3507(d); 5 CFR 1320.11.

not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

B. Summary of Proposals

The proposed amendments would establish a new procedure by which shareholders could use Rule 14a-8 to propose bylaw amendments establishing procedures that would permit eligible shareholders to nominate candidates for the board of directors in the company's proxy materials.[76] As proposed, Rule 14a-8 would be amended to require inclusion of such proposals, provided that the proposals comply with the procedural requirements of Rule 14a-8 and the additional proposed disclosure requirements. To be included, the bylaw amendments would be required to be submitted by a shareholder proponent that is eligible to, and has, filed a Schedule 13G including all required disclosures and has continuously held more than 5% of the company's securities entitled to be voted on the proposal for at least one year. We also propose to amend Schedule 13G and add Item 24 and Item 25 of Schedule 14A to require disclosure regarding the shareholder proponent's background and relationships with the company. This disclosure would be provided by the shareholder proponent and the company, respectively.

In addition to the proposed amendments concerning shareholder proposals to amend company bylaws, we propose several amendments to require disclosure about shareholder nominees for director and nominating shareholders when shareholder

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[76] Proposed Rule 14a-18 would establish special provisions in the proxy rules applicable to electronic shareholder forums in order to encourage shareholders and companies to take advantage of these forums. These rules are intended to allow issuers and shareholders broad latitude with regard to the forums and do not impose any new paperwork burdens.

nominees are included in the company's proxy material. Proposed Rule 14a-17 would require nominating shareholders to provide the company with certain Schedule 14A information regarding each director nominee for inclusion in the proxy statement or on a website to which the proxy statement refers. In addition, proposed Rule 14a-17 would require a nominating shareholder to provide information regarding the background of the nominating shareholder and its relationships with the company that would be required by proposed Items 8A, 8B and 8C of Schedule 13G to the company.

The proposed information collection requirements would be mandatory and responses would not be confidential. The hours and costs associated with preparing and filing forms and retaining records constitute reporting and cost burdens imposed by the collection of information requirements. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information requirement unless it displays a currently valid OMB control number.

C. Paperwork Reduction Act Burden Estimates

The proposed amendments would, if adopted, require additional disclosure on Schedule 14A and Schedule 13G, as well as in a company's registration statements.

1. Proposed Amendments to Rule 14a-8 Concerning Bylaw Proposals for Shareholder Nominations of Directors

Schedule 14A prescribes the information that a company must include in its proxy statements to provide security holders with material information relating to voting decisions. For purposes of the PRA, we currently estimate that compliance with Regulation 14A, including preparation of Schedule 14A, requires 475,781 hours of company personnel time (approximately 66 hours per company) and costs $63,437,000

for the services of outside professionals (approximately $8,750 per company).[77] The proposed amendment to Rule 14a-8 would require the company to include shareholder proposed bylaw amendments that provide procedures for shareholder nominations of directors unless the shareholder has failed to comply with the procedural requirements of Rule 14a-8.

Historically shareholders have made relatively few binding proposals. In the 2006-2007 proxy season, companies received 1,250 shareholder proposals, of which only 100 were binding proposals.[78] Of those 100, only three related to bylaw amendments providing for shareholder nominees to appear in the company's proxy materials.[79] These three proposals were not subject to the additional disclosure requirements that would apply to shareholders under the proposed rules. In light of this historical data and given the proposed eligibility requirements to submit such proposals, we estimate that there would be a limited number of shareholder proposals to amend the bylaws to provide for shareholder nominees to be included in the company's proxy materials. We note, however, that by establishing procedures for submission of theses types of proposals, we are likely to encourage more bylaw amendment proposals than we currently receive. We

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77 These figures assume 7,250 respondents that file Schedule 14A under Regulation 14A with the Commission. We estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden of preparation is carried by outside professionals retained by the issuer at an average cost of $400 per hour. The hourly cost estimate is based on our consultations with several registrants and law firms and other persons who regularly assist registrants in preparing and filing with the Commission.

78 Rachel McTague, 39 Securities Regulation & Law Report 911 (June 11, 2007) (stating that, according to data complied by the Institutional Shareholder Services, nearly 1,250 shareholder proposals were submitted to companies during the 2006 proxy season).

79 Tomoeh Murakami Tse, The Washington Post, March 15, 2007, at D2 (stating that three proxy access proposals were submitted by shareholders during the 2006 proxy season).

therefore assume some increase in such proposals and estimate that the number would be 30 per year.[80]

For purposes of the PRA, we estimate that the proposed amendments to Rule 14a-8 would create an incremental burden of six hours of company personnel time and costs of $800 for the services of outside professionals. In sum, we estimate that the amendments to Regulation 14A will increase the annual paperwork burden by approximately 180 hours of company personnel time and a cost of approximately $24,000 for the services of outside professionals. These burdens and costs would include the additional disclosure in proposed Item 24 and Item 25 of Schedule 14A as well as the burdens and costs associated with including the proposal in the company's proxy materials.

2. Proposed Amendments to Schedule 13G Requiring Disclosure from Shareholder Proponents

Exchange Act Schedule 13G is a short-form filing for persons to report ownership of more than 5% of a class of voting equity securities registered under Section 12 of the Exchange Act. Generally, the filer must certify that the securities have not been acquired and are not held for the purpose of, or with the effect of, changing or influencing the control of the issuer of the securities. For purposes of the PRA, we currently estimate that compliance with the Schedule 13G requirements under Regulation 13D requires 98,800 burden hours, broken down into 24,700 hours (or 2.6 hours per respondent) of

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[80] We estimate that the number of proposals for bylaw amendments to allow shareholder nominations of directors received last proxy season (3) would increase tenfold (30).

respondent personnel time and costs of $22,230,000 (or $2,340 per respondent) for the services of outside professionals.[81]

The proposed amendment to Rule 14a-8 would require the company to include certain shareholder proposed bylaw amendments only if they are submitted by a shareholder proponent that is eligible to, and has, filed a Schedule 13G that complies with proposed Schedule 13G Items 8A, 8B, and 8C. As explained above, we estimate that the number of shareholder proponents submitting such proposals under Rule 14a-8 would be 30. Rather than presume that any of the shareholder proponents previously filed a Schedule 13G on an individual or group basis, we assume for purposes of the PRA that each person or group will be a new Schedule 13G filer. This would increase the number of Schedule 13G filers. In addition, the proposed disclosure of each shareholder proponent's background and relationships with the company would be different and more detailed than the disclosure currently required by Schedule 13G, increasing the reporting burden associated with this schedule.

For purposes of the PRA, we estimate that the proposed amendments to Schedule 13G would create an incremental burden of 4.1 hours per response, which we would add to the existing Schedule 13G burden resulting in a total burden of 14.5 hours.[82] Each of the 30 additional filers would incur a burden of approximately 3.6 hours of respondent

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[81] These figures assume 9,500 respondents that file Schedule 13G with the Commission. We estimate that 25% of the burden of preparation is carried by the company internally and that 75% of the burden of preparation is carried by outside professionals retained by the issuer. These figures assume an average cost of $300 per hour. The Commission has increased the cost estimate $100 since our last estimate provided to OMB based on our consultations with several registrants and law firms and other persons who regularly assist registrants in preparing and filing with the Commission. In our PRA submission, we will increase the cost of outside professionals to meet the new $400 per hour estimate.

[82] We currently estimate the burden for preparing a Schedule 13G filing to be 10.4 hours.

personnel time (25% of the total burden) and costs of $4,350 for the services of outside professionals (75% of the total burden). In sum, we estimate that the amendments to Schedule 13G will increase the annual paperwork burden by approximately 108 hours of respondent personnel time and a cost of approximately $130,000 for the services of outside professionals.

3. Proposed Rule 14a-17 to Require Disclosure from Nominating Shareholders and Shareholder Nominees

Proposed Rule 14a-17 would require nominating shareholders and their nominees to provide disclosure relating to their backgrounds and relationships with the company for inclusion in a Schedule 14A. As explained above, we estimate that there will be 30 proposals for bylaw amendments to allow shareholder nominations of directors annually. Of these, for purposes of this analysis we estimate that 50% will be successful. If we assume that in every case where a bylaw amendment is successful a shareholder nominee is proposed, the additional disclosure would be required 15 times annually.

For purposes of the PRA, we estimate that proposed Rule 14a-17 would create an incremental burden of six hours of company personnel time and costs of $800 for the services of outside professionals for each shareholder nominee included in a Schedule 14A. In sum, we estimate that the amendments will increase the annual paperwork burden of Regulation 14A by approximately 90 hours of company personnel time and a cost of approximately $12,000 for the services of outside professionals.

D. Solicitation of Comments

We request comment on the accuracy of our estimates. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090, with reference to File No. S7-16-07. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7-16-07, and be submitted to the Securities and Exchange Commission, Office of the Secretary - Records Management Branch, 100 F Street, NE, Office of Filings and Information Services, Washington, DC 20549. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its

full effect if OMB receives it within 30 days of publication.

V. Cost-Benefit Analysis

We propose to revise and update the proxy rules to more effectively serve their essential purpose of facilitating the exercise of shareholders' rights under state law. We request any relevant data from commenters that would be helpful in quantifying these costs and benefits.

A. Benefits

The proposed amendments to Rule 14a-8 concerning binding bylaw proposals relating to shareholder nominations of directors on the company's proxy would help shareholders to exercise rights under state law to nominate and elect directors of their choosing. A bylaw amendment that allowed shareholder nominees to be included in the company's proxy materials would reduce the cost for a shareholder to nominate candidates for election on the board since the nominating shareholder would not need to incur the cost of preparing separate proxy materials and mailing those materials to other shareholders. Allowing shareholders to propose bylaw amendments that would enable them to include shareholder nominees on the company's proxy may provide shareholders a more effective voice than simply being able to recommend candidates to the nominating committee or being able to nominate candidates in person at a shareholder meeting.

The proposed amendment would require additional disclosure on Schedule 13G and Schedule 14A by shareholder proponents, nominating shareholders and shareholder nominees about their background and relationships with the company. This additional

information provided by such disclosures would help provide transparency to shareholders in voting on bylaw amendments and shareholder nominees.

Finally, the proposed amendments to Regulation 14A regarding the electronic shareholder forum seek to remove unnecessary barriers to the use of technology to increase constructive communication between shareholders and between shareholders and the company. The exemption for communications more than 60 days prior to the announced meeting date would allow for more open and unfettered communication between parties. The enhanced communication may result in better coordination among the views of shareholders, more effective exercise of state law rights, and a better alignment between the interests of shareholders and the company.

B. Costs

The proposed amendments would impose some direct costs on companies and shareholders who are subject to the new rules. For purposes of the PRA, we estimate that the annual additional burden to companies of preparing the required proxy disclosure would be approximately 270 hours of company personnel time and a cost of approximately $36,000 for the services of outside professionals. In addition, for purposes of the PRA, we estimate that the annual incremental burden to prepare the required disclosure for shareholder proponents, nominating shareholders and nominees would be approximately 108 hours of personnel time and a cost of approximately $130,000 for the services of outside professionals.

The bulk of the additional disclosure required by the amendments to Regulation 14A would be provided to the company by shareholder proponents and nominating shareholders. The proposed amendments would add costs to the preparation and

dissemination of this information in the company's proxy statement where shareholders have chosen to make proposals or put forth nominees.

If shareholders have adopted a shareholder nomination bylaw amendment and chose to allocate company resources to facilitate shareholder nominations, the cost of preparing the company's proxy materials would be increased by the need to prepare and include information relating to the shareholder nominees. In addition, the company could incur increased costs relating to the solicitation of proxies in support of the board's candidates and against the shareholder nominees.

The proposed amendments to Regulation 14A and Schedule 13G would impose costs on shareholder proponents. Shareholder proponents would be required to provide extensive background information and information on their relationships with the issuer on Schedule 13G. Under the proposed amendments, a company would also incur preparation and filing costs associated with disclosing the nature and extent of its relationships with a shareholder proponent. In addition, companies may incur costs for procedures to monitor its relationships with shareholder proponents.

If a shareholder nomination bylaw amendment were adopted, shareholder nominees and nominating shareholders would also incur costs associated with the Rule 14a-17 disclosure requirements. Nominating shareholders and their nominees might also bear solicitation costs in seeking support for the nominee's election. However, these disclosure and solicitation costs are not expected to exceed the costs that would be incurred from a separate proxy contest.

Under the proposed rules, companies may choose to incur additional costs to establish more responsive policies and procedures in an attempt to avoid having

shareholders seek bylaw amendments or propose shareholder nominees. The company and the board may spend more time on shareholder relations instead of the business of the company. In addition, it is possible that electing a shareholder nominee to the board could have a disruptive effect on boardroom dynamics.

Request for Comment

We are sensitive to the costs and benefits imposed by our rules, and have identified certain costs and benefits related to these proposals. We request comment on all aspects of this cost-benefit analysis, including identification of any additional costs and benefits. We encourage commenters to identify and supply relevant data concerning the costs and benefits of the proposed amendments.

- What are the costs and benefits of a 5% threshold as opposed to alternative thresholds? How would the private costs of assembling a 5% coalition vary across different types or sizes of companies?
- What are the potential costs and benefits of facilitating an increase in the variation of nomination rules across companies?
- What are the costs and benefits of potentially moving away from a dual-slate structure in which voting shareholders choose between the management card and the dissident card toward a unitary slate voting system in which voters choose among items on a single proxy card?

VI. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act[83] requires us, when adopting rules under the

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[83] 15 U.S.C. 78w(a)(2).

Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 3(f) of the Exchange Act[84] and Section 2(c) of the Investment Company Act[85] require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

The proposed rules are intended to promote the exercise of shareholder rights under state law and provide shareholders with information about shareholder proponents of, and shareholder nominees under, shareholder nomination bylaw amendments. The proposed rules, if adopted, would establish a fair and transparent mechanism for shareholders to propose and adopt bylaw amendments to establish procedures relating to shareholder director nominations inclusion in the company proxy materials.

The disclosure requirements in the proposed rules would require detailed information regarding the background and relationships of shareholder proponents of the bylaw amendments to be disclosed by the shareholder proponents and the company. This disclosure would provide shareholders a better informed basis for deciding whether to approve the bylaw amendments. Changes to the company's bylaws should therefore better reflect shareholders' preferences regarding director nomination procedures. Investors may value the information about whether companies have subjected these

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84 15 U.S.C. 78c(f).

85 15 U.S.C. 80a-2(c).

preferences to a vote and provided a specified alternative procedure for inclusion of shareholder nominees in the company's proxy materials. This may promote the efficiency of the exercise of shareholder rights under state law.

If the shareholders adopt a bylaw amendment and the company is required to include shareholder nominees in its proxy materials, there may be increased competition for board positions, which might encourage or discourage qualified candidates from running. The proposed rules focus on improving and streamlining information flow between investors and with the company, which we believe would give more direct effect to shareholder preferences regarding shareholder director nominees. We believe these changes are likely to have a limited effect on efficiency, competition and capital formation. The effects of the proposed rules could be positive or negative depending on what shareholders deem is best for them given the additional information. We request comment on whether the proposals, if adopted, would promote efficiency, competition and capital formation or have an impact or burden on competition. Commenters are requested to provide empirical data and other factual support for their view, if possible.

VII. Initial Regulatory Flexibility Act Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed revisions to the rules and forms under the Exchange Act that would permit shareholders to propose bylaw amendments to establish procedures relating to shareholder director nominations for inclusion in the company's proxy materials. The proposed revisions would also facilitate the use of an electronic shareholder forum by companies and shareholders.

A. Reasons for, and Objectives of, Proposed Action

The proposed rules are intended to open up communication between the company and its shareholders, promote the exercise of shareholder rights under state law, and provide shareholders with better information to make an informed voting decision by requiring disclosure about shareholder proponents and shareholder nominees under any shareholder nomination bylaw amendments.

The proposals, if adopted would facilitate the exercise of shareholders' rights under state law. As proposed, shareholders who have held more than 5% of the company's securities entitled to be voted at the meeting for at least one year by the date of their submission may submit binding proposals to amend the company bylaws to establish procedures for shareholder nominations of directors. Enabling shareholders to establish the company's procedures for inclusion of shareholder nominees on the company's proxy would provide shareholders with greater control over the use of the company's proxy process.

In addition, encouraging the use of electronic shareholder forums and the Internet may have the effect of improving shareholder communication. Any electronic shareholder forum may enhance shareholders' ability to communicate not only with management, but also with each other. Such direct access may improve shareholder relations to the extent shareholders have improved access to management.

B. Legal Basis

We are proposing amendments to the forms and rules under the authority set forth in Sections 13, 14, and 23(a) of the Exchange Act, as amended and Section 20(a) and 38 of the Investment Company Act, as amended.

C. Small Entities Subject to the Proposed Rules

The Regulatory Flexibility Act defines "small entity" to mean "small business," "small organization," or "small governmental jurisdiction."[86] The Commission's rules define "small business" and "small organization" for purposes of the Regulatory Flexibility Act for each of the types of entities regulated by the Commission.[87] A "small business" and "small organization," when used with reference to an issuer other than an investment company, generally means an issuer with total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that there are approximately 1,100 issuers, other than investment companies, that may be considered reporting small entities.[88] For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[89] Approximately 215 investment companies meet this definition.[90] The proposed rules may affect each of the approximately 1,315 issuers that may be considered reporting small entities, to the extent companies and shareholders take advantage of the proposed procedures.[91] We request comment on the number of small

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86 5 U.S.C. 601(6).

87 Securities Act Rule 157 (17 CFR 230.157) and Exchange Act Rule 0-10 (17 CFR 240.0-10) contain the applicable definitions.

88 The estimated number of reporting small entities is based on 2007 data, including the Commission's EDGAR database and Thomson Financial's Worldscope database.

89 Rule 0-10 under the Investment Company Act [17 CFR 270.0-10] contains the applicable definition.

90 The estimated number of reporting investment companies that may be considered small entities is based on December 2006 data from the Commission's EDGAR database and a third-party data provider.

91 The proposed amendments to Rule 14a-8 would not impact open-end investment companies that may be small entities because shareholders of those entities are not eligible to file Schedule 13G,

entities that would be impacted by our proposals, including any available empirical data.

D. Reporting, Recordkeeping and Other Compliance Requirements

The proposals would require all companies, including small entities, to permit certain shareholders to submit the specified binding proposals to amend the company bylaws. Shareholder proponents, including proponents that are small entities, would be required to provide the proposed Schedule 13G disclosure regarding background and relationships with the company and companies would be required to include similar disclosure provided by the shareholder proponent with the company's proxy.

If a bylaw amendment with an alternate shareholder nomination procedure is adopted, issuers would be required to meet the new procedural requirements and provide disclosure relating to the shareholder nominee in the proxy and the nominating shareholders and shareholder nominees would be required to provide additional information regarding their background and relationships with the company.

E. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no rules that conflict with or duplicate the proposed rules.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective of our proposals, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments and rules, we considered the following alternatives:

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which must be filed in order to rely upon the proposed rule. Of the 215 investment companies that may be considered small entities, 131 are open-end investment companies.

- the establishment of different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- the clarification, consolidation, or simplification of the rule's compliance and reporting requirements for small entities;
- the use of performance rather than design standards; and
- an exemption from coverage of the proposed rules, or any part thereof, for small entities.

The Commission has considered a variety of reforms to achieve its regulatory objectives. The proposed amendments, if adopted, would require companies to include binding bylaw amendments relating to procedures for shareholder nominations of directors. The proposals are being made in order to more effectively serve the essential purpose of the proxy rules to facilitate the exercise of shareholders' rights under state law. The proposed amendments also would require additional disclosure by the shareholder proponent (or any subsequent nominating shareholder or shareholder nominee) and the company of the background of the proponent and its relationships with the issuer.[92] We believe this additional disclosure will assist investors in making an informed voting decision. It is not clear how applying separate compliance or reporting standards to small entities would further encourage facilitation of the exercise of these rights. However, we are considering what level of disclosure would be appropriate for shareholder proponents, nominating shareholders and shareholder nominees regarding their background and relationships with the company. If we require less disclosure from

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[92] The proposed ability for shareholder proponents to propose bylaw amendments to be included in the company's proxy material is linked to their filing on Schedule 13G. A lower ownership threshold for small entities would not be appropriate due to the loss of the additional disclosure and safeguards provided by Schedule 13G.

smaller issuers we are concerned that shareholders may not receive sufficient information with which to make an informed decision.

We considered the use of performance standards rather than design standards in the proposed rules. The proposal contains both performance standards and design standards. We are proposing design standards to the extent that we believe that compliance with particular requirements are necessary. However, to the extent possible, we are proposing rules that impose performance standards. By allowing companies to establish their own procedures relating to shareholder nominations, we seek to provide companies, shareholder proponents and nominating shareholders with the flexibility to devise the means through which they can comply with the standards.

We request comment on whether separate requirements for small entities would be appropriate. The purpose of the amendments is to provide certain shareholders with the ability to amend the bylaws to establish their own procedures for shareholder nominations of directors and to improve shareholder communications. Exempting small entities would not appear to be consistent with these goals. The establishment of any differing compliance or reporting requirements or timetables or any exemptions for small business issuers may not be in keeping with the objective of the proposed rules.

G. Solicitation of Comment

We encourage comments with respect to any aspect of this initial regulatory flexibility analysis. In particular, we request comments regarding:

- The number of small entities that may be affected by the proposals;
- The existence or nature of the potential impact of the proposals on small entities discussed in the analysis; and

- How to quantify the impact of the proposed rules.

Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the final regulatory flexibility analysis, if the proposals are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

VIII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[93] a rule is "major" if it has resulted, or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on whether our proposals would be a "major rule" for purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment or innovation.

IX. Statutory Basis and Text of Proposed Amendments

We are proposing amendments to rules pursuant to Sections 13, 14, and 23(a) of the Exchange Act, as amended, and Sections 20(a) and 38 of the Investment Company Act, as amended.

List of Subjects

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[93] Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996)(codified in various sections of 50 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. §601).

17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, the Securities and Exchange Commission proposes to amend Title 17, chapter II of the Code of Federal Regulations as follows:

PART 240 – GENERAL RULES AND REGULATION, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 et. seq.; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. §240.13d-102 Schedule 13G is amended by:

a. Removing the authority citation following the section; and

b. Adding Items 8A, 8B and 8C.

The additions are to read as follows:

§ 240.13d-102 Schedule 13G - Information to be included in statements filed pursuant to §240.13d–1(b), (c), and (d) and amendments thereto filed pursuant to §240.13d–2.

* * * * *

Item 8A. Shareholder Proponents

(a) Definition of shareholder proponent: In this item, the term "shareholder proponent" means:

(1) A person or group that has formed any plans or proposals regarding an amendment to a company's bylaws, in accordance with § 240.14a-8(i)(8);

(2) A nominating shareholder as defined in § 240.14a-17(a);

(3) Any affiliate, executive officer or agent acting on behalf of the person (or group) described above in Item 8A(a)(1)-(2) with respect to the plans or proposals; and

(4) Anyone acting in concert with, or who has agreed to act in concert with, the person (or group) described above in Item 8A(a)(1)-(2) with respect to the plans or proposals.

(b) A shareholder proponent, as defined in section (a), shall provide the additional disclosure required by Items 8B and 8C.

Note to Item 8A. For purposes of this Item 8A and for the disclosures required by Item 8B and Item 8C, the term "plans or proposals" shall include, but not be limited to, the submission of a proposal to amend a company's bylaws, and instances where a shareholder proponent has indicated an intent to management to submit such a proposal or has indicated an intent to management to refrain from submitting such a proposal conditioned on the taking or not taking of a corporate action. The term also shall include a shareholder nomination for director pursuant to a bylaw procedure established pursuant to Rule 14a-8(i)(8), and instances where a shareholder proponent has indicated an intent to management to submit such a nomination or has indicated an intent to management to refrain from submitting such a nomination conditioned on the taking or not taking of a corporate action.

Item 8B. Relationships with the Company of Shareholder Proponents

(a) A shareholder proponent, as defined in Item 8A, must describe the following:

(1) Any direct or indirect interest in any contract between the shareholder proponent and the company or any affiliate of the company (including any employment agreement, collective bargaining agreement, or consulting agreement);

(2) Any pending or threatened litigation in which the shareholder proponent is a party or a material participant, involving the company, any of its officers or directors, or any affiliate of the company; and

(3) Any other material relationship between the shareholder proponent and the company or any affiliate of the company not otherwise disclosed.

Note to Item 8B(a)(3). Any other material relationship of the shareholder proponent with the company or any affiliate of the company may include, but is not limited to, whether the shareholder proponent currently has, or has had in the past, an employment relationship with the company or any affiliate of the company (including consulting arrangements).

(b) A shareholder proponent must describe the following items where they occurred during the 12 months prior to the formation of any plans or proposals, or during the pendency of any proposal or nomination:

(1) Any material transaction of the shareholder proponent with the company or any affiliate of the company; and

(2) Any discussion regarding the proposal or nomination between the shareholder proponent and a proxy advisory firm.

(c) If the shareholder proponent holds more than 5% of any enterprise with the same Standard Industrial Classification code as the company, the shareholder proponent

must describe the number and percentage of securities held in the competitor, as of the date the shareholder proponent first formed any plans or proposals.

(d) Describe any material relationship of the shareholder proponent with any enterprise with the same Standard Industrial Classification code as the company other than as a shareholder, as of the date the shareholder proponent first formed any plans or proposals.

(e) Disclose any meetings or contacts, including direct or indirect communication by the shareholder proponent, with the management or directors of the company that occurred during the 12 months prior to the formation of any plans or proposals or during the pendency of any proposal or nomination, including:

(1) Reasonable detail of the content of such direct or indirect communication;

(2) A description of the action or actions sought to be taken or not taken;

(3) The date of the communication;

(4) The person or persons to whom the communication was made;

(5) Whether that communication included any reference to the possibility of such a proposal or nomination; and

(6) Any response by the company or its representatives to that communication prior to the date of filing the required disclosure.

Note to Item 8B(e). To the extent that a shareholder proponent conducts regularly scheduled meetings or contacts with management or directors of a company, the shareholder proponent may describe the frequency of the meetings and the subjects covered at the meetings rather than providing information separately for each meeting. However, if an event or discussion occurred at a specific meeting that is material to the

shareholder proponent's decision to submit a proposal or nomination, that meeting should be discussed in detail separately.

Item 8C. Background Information Regarding Shareholder Proponents

(a) If the shareholder proponent is not a natural person, provide:

(1) The identity of the natural person or persons associated with the entity responsible for the formation of any plans or proposals;

(2) The manner in which such person or persons were selected, including a discussion of whether or not the equity holders or other beneficiaries of the shareholder proponent entity played any role in the selection of such person or persons or otherwise played any role in connection with any plans or proposals;

(3) Whether the person or persons associated with the entity responsible for the formation of any plans or proposals have, in forming such plans or proposals, a fiduciary duty to the equity holders or other beneficiaries of the entity;

(4) The qualifications and background of such person or persons relevant to the plans or proposals; and

(5) Any interests or relationships of such person or persons, and of that entity, that are not shared generally by the other shareholders of the company and that could have influenced the decision by such person or persons and the entity to submit a proposal or nomination.

(b) If the shareholder proponent is a natural person, disclose:

(1) The qualifications and background of such person or persons relevant to the plans or proposals; and

(2) Any interests or relationships of such person or persons that are not shared

generally by the other shareholders of the company and that could have influenced the decision by such person or persons to submit a proposal or nomination.

Note to Item 8C(a)(5) and Item 8C(b)(2). Examples of interests or relationships of the shareholder proponent not shared by other shareholders of the company include, but are not limited to, contractual arrangements, current or previous employment with the company, employment agreements, consulting agreements, and supplier or customer relationships.

3. § 240.14a-2 is amended by adding paragraph (b)(6) to read as follows:

§ 240.14a-2 Solicitations to which § 240.14a-3 to § 240.14a-15 apply.

* * * * *

(b) * * *

(6) Any solicitation in an electronic shareholder forum established pursuant to the provisions of Rule 14a-18 by or on behalf of any person who does not seek directly or indirectly, either on its own or another's behalf, the power to act as proxy for a security holder and does not furnish or otherwise request, or act on behalf of a person who furnishes or requests, a form of revocation, abstention, consent or authorization provided that the solicitation is made more than 60 days prior to the date announced by a registrant for its next annual or special meeting of shareholders or if the registrant announces the date of its next annual or special meeting of shareholders less than 60 days before the meeting date, then the solicitation may not be made more than two days following the date of the registrant's announcement of the meeting date.

4. § 240.14a-6 is amended by:

a. Removing the period at the end of the undesignated paragraph following

paragraph (a)(6), prior to Note 1, and adding a comma in its place; and

b. Adding "or where the proxy materials include a shareholder nominee submitted pursuant to a bylaw adopted in accordance with § 240.14a-8(i)(8)." after that new comma.

5. § 240.14a-8 is amended by:

a. Revising paragraph (b)(1); and

b. Revising paragraph (i)(8);

The revisions read as follows:

§ 240.14a-8 Shareholder proposals.

* * * * *

(b) ***

(1) In order to be eligible to submit a proposal, you must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal; except where additional eligibility requirements are specified in this rule. You must continue to hold those securities through the date of the meeting.

* * * * *

(i) * * *

(8) Relates to election: If the proposal relates to a nomination or an election for membership on the company's board of directors or analogous governing body or a procedure for such nomination or election, except for a proposal to establish a procedure by which shareholder nominees for election of director would be included in the company's proxy materials, where that proposal:

(i) Relates to a change in the company's bylaws that would be binding on the company if approved by the shareholders; and

(ii) Is submitted by a shareholder (or group of shareholders) that:

(A) Has continuously held more than 5% of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date the shareholder submits the proposal;

(B) Is eligible to file a Schedule 13G (§ 240.13d-102) as an institutional investor or a passive investor, including pursuant to Rule 13d-1(l) (§ 240.13d-1(l)); and

(C) Has filed a statement of beneficial ownership on Schedule 13G (§ 240.13d-102), or an amendment thereto, that contains all required information;

* * * * *

6. Add § 240.14a-17 and § 240.14a-18 to read as follows:

§ 240.14a-17 Shareholder nominations for election as director.

(a) A nominating shareholder is any shareholder (or group of shareholders) that forms any plans or proposals regarding the submission of a nominee or nominees for director to the company for inclusion in the company proxy materials, in accordance with a company bylaw that has been adopted by shareholders, as provided in § 240.14a-8(i)(8).

Note to Rule 14a-17(a). The formation of any plans or proposals includes instances where the shareholder has indicated an intent to management to submit a nomination or has indicated an intent to management to refrain from submitting a nomination conditioned on the taking or not taking of a corporate action.

(b) A nominating shareholder shall provide the information required by Item 8A,

Item 8B, and Item 8C of Schedule 13G (§ 240.13d-102) to the company at the time the shareholder forms any plans or proposals with regard to submission of a nominee or nominees for director. Immediately after receiving the information from the nominating shareholder, the company shall provide the information on its website, or provide a link to a website address where the information would appear. The company also shall include the information provided by the nominating shareholder pursuant to this section in its proxy statement or on a website to which the proxy statement refers.

(c) At the time that a nominating shareholder submits to the company for inclusion in the company proxy materials a nominee or nominees, in accordance with a company bylaw that has been adopted by shareholders, as provided in § 240.14a-8(i)(8), the nominating shareholder must provide to the company, for inclusion in the company proxy statement or on a website to which the proxy statement refers, the following:

(1) Information meeting the disclosure requirements of Item 4(b) of Schedule 14A, as applicable;

(2) Information meeting the disclosure requirements of Item 5(b) of Schedule 14A, as applicable;

(3) Information meeting the disclosure requirements of Item 7 of Schedule 14A, as applicable;

(4) Information meeting the disclosure requirements of Item 22(b) of Schedule 14A, as applicable; and

(5) The consent of the nominee or nominees to be named in the company's proxy statement and to serve if elected.

(d) Where a nominating shareholder fails to provide any of the information required under paragraphs (b) and (c) of this rule, the shareholder's nominee will not be required to be included in the company's proxy materials.

(e) The company will not be responsible for the information provided to the company by the nominating shareholder and included in the company's proxy statement or on a website to which the proxy statement refers, in satisfaction of the company's disclosure obligations under Regulation 14A.

(f) Information about a shareholder nominee or nominees that has been provided to the company by a nominating shareholder, and which is disclosed in the company's proxy statement or on a website to which the proxy statement refers, in satisfaction of the company's disclosure obligations under Regulation 14A, will not be deemed incorporated by reference into any filing under the Securities Act of 1933 or the Act, except to the extent that the registrant specifically incorporates that information by reference.

§ 240.14a-18 Electronic Shareholder Forums.

(a) A company or shareholder may establish, maintain, or operate an electronic shareholder forum to facilitate interaction among shareholders and between the company and its shareholders as the company or shareholder deems appropriate. Subject to (b) and (c) of this Rule, the forum must comply with the federal securities laws, including Section 14(a) of the Act and its associated regulations, other applicable federal laws, applicable state law, and the company's charter and bylaw provisions.

(b) No company or shareholder because of establishing, maintaining, or operating an electronic shareholder forum is liable under the federal securities laws for any statement or information provided by another person to the electronic shareholder forum.

Nothing in this Rule 14a-18 prevents or alters the application of other provisions of the federal securities laws, including the provisions for liability for fraud, deception, or manipulation, or other applicable federal and state laws to a person or persons providing a statement or information to an electronic shareholder forum.

(c) Reliance on the exemption in Rule 14a-2(b)(6) to construct, maintain, support, or participate in an electronic shareholder forum does not eliminate a person's eligibility to solicit proxies after the date that the exemption in Rule 14a-2(b)(6) is available, provided that any such solicitation is conducted in accordance with this regulation.

7. § 240.14a-101 is amended by adding Item 24 and Item 25 to read as follows:

§ 240.14a-101 Schedule 14A. Information required in proxy statement.

Schedule 14A Information

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Item 24. Relationships with Shareholder Proponents. Disclose the nature and extent of relationships between the shareholder proponent, any affiliate, executive officer or agent of such shareholder proponent, or anyone acting in concert with, or who has agreed to act in concert with, such shareholder proponent with respect to the proposed bylaw amendment submitted in accordance with § 240.14a-8(i)(8), on the one hand, and the company, on the other, including:

(a) Any direct or indirect interest of the shareholder proponent in any contract with the company or any affiliate of the company (including any employment agreement, collective bargaining agreement, or consulting agreement);

(b) Any pending or threatened litigation in which the shareholder proponent is a party or a material participant, involving the company, any of its officers or directors, or

any affiliate of the company; and

(c) Any other material relationship between the shareholder proponent, the company, or any affiliate of the company not otherwise disclosed.

Note to Paragraph (c): Any other material relationship between the shareholder proponent and the company or any affiliate of the company may include, but is not limited to, whether the shareholder proponent currently has, or has had in the past, an employment relationship with the company (including consulting arrangements).

(d) With respect to the 12 months prior to a shareholder proponent forming any plans or proposals, or during the pendency of any proposal, regarding an amendment to a company's bylaws in accordance with § 240.14a-8(i)(8):

(1) Any material transaction of the shareholder proponent with the company or any affiliate of the company; and

(2) Any meeting or contact, including direct or indirect communication by the shareholder proponent, with the management or directors of the company, including:

(i) Reasonable detail of the content of such direct or indirect communication;

(ii) A description of the action or actions sought to be taken or not taken;

(iii) The date of the communication;

(iv) The person or persons to whom the communication was made;

(v) Whether that communication included any reference to the possibility of such a proposal; and

(vi) Any response by the company or its representatives to that communication prior to the date of filing the required disclosure.

Note to Paragraph (d)(2): To the extent that a shareholder proponent conducts

regularly scheduled meetings or contacts with management or directors of a company, the company may describe the frequency of the meetings and the subjects covered at the meetings rather than providing information separately for each meeting. However, if to the company's knowledge, an event or discussion occurred at a specific meeting that is material to the shareholder proponent's decision to submit a proposal, that meeting should be discussed in detail separately.

Note to Item 24. For purposes of the disclosures required by this item, the company will be entitled to rely upon the Schedule 13G disclosures of the shareholder proponent concerning the date upon which the shareholder proponent formed any plans or proposals with regard to the submission of a proposal to amend a company's bylaws.

Item 25. Relationships with Nominating Shareholders. (a) Provide the information submitted to the company by any nominating shareholder as required by §240.14a-17(b) and (c).

(b) Disclose the nature and extent of relationships between the nominating shareholder, any affiliate, executive officer or agent of such nominating shareholder, or anyone acting in concert with, or who has agreed to act in concert with, such nominating shareholder with respect to a nomination pursuant to a bylaw adopted in accordance with Rule 14a-8(i)(8), on the one hand, and the company, on the other, including:

(1) Any direct or indirect interest of the nominating shareholder in any contract with the company or any affiliate of the company (including any employment agreement, collective bargaining agreement, or consulting agreement);

(2) Any pending or threatened litigation in which the nominating shareholder is a party or a material participant, involving the company, any of its officers or directors, or

any affiliate of the company; and

(3) Any other material relationship between the nominating shareholder, the company, or any affiliate of the company not otherwise disclosed.

Note to Paragraph (b)(3): Any other material relationship between the nominating shareholder and the company or any affiliate of the company may include, but is not limited to, whether the nominating shareholder currently has, or has had in the past, an employment relationship with the company (including consulting arrangements).

(c) With respect to the 12 months prior to a nominating shareholder forming any plans or proposals to submit a nomination for director for inclusion in the company's proxy statement, or during the pendency of any nomination:

(1) Any material transaction of the nominating shareholder with the company or any affiliate of the company; and

(2) Any meeting or contact, including direct or indirect communication by the nominating shareholder, with the management or directors of the company, including:

(i) Reasonable detail of the content of such direct or indirect communication;

(ii) A description of the action or actions sought to be taken or not taken;

(iii) The date of the communication;

(iv) The person or persons to whom the communication was made;

(v) Whether that communication included any reference to the possibility of such a nomination; and

(vi) Any response by the company or its representatives to that communication prior to the date of submitting the nomination.

Note to Paragraph (c)(2): To the extent that a nominating shareholder conducts

regularly scheduled meetings or contacts with management or directors of a company, the company may describe the frequency of the meetings and the subjects covered at the meetings rather than providing information separately for each meeting. However, if to the company's knowledge, an event or discussion occurred at a specific meeting that is material to the nominating shareholder's decision to submit a nomination, that meeting should be discussed in detail separately.

Note to Item 25. For purposes of the disclosures required by this item, the company will be entitled to rely upon the disclosures of the nominating shareholder submitted to the company as required by Rule 14a-17(c) concerning the date upon which the nominating shareholder formed any plans or proposals with regard to the submission of a nominee or nominees to be included in the company's proxy materials.

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By the Commission.

Nancy M. Morris
Secretary

Dated: July 27, 2007