

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT  
THURGOOD MARSHALL UNITED STATES COURTHOUSE  
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**JOHN M. WALKER, JR.  
CHIEF JUDGE**

**ROSEANN B. MacKECHNIE  
CLERK**

January 9, 2006

**BY MAIL AND FACSIMILE (FAX: 202-551-5017)**

Giovanni P. Prezioso  
General Counsel  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**Re: *American Federation of State, County & Municipal Employees  
Pension Plan v. American International Group*, Docket No. 05-2825-cv**

Dear Mr. Prezioso:

The Court has instructed me to draw your attention to a case, argued on December 15, 2005, that remains *sub judice*. The case is *American Federation of State, County & Municipal Employees Pension Plan v. American International Group*, Docket No. 05-2825-cv. It is an appeal from a decision by the United States District Court for the Southern District of New York, which held that American International Group (“AIG”) may exclude under Securities Exchange Act Rule 14a-8(i)(8) a shareholder proposal submitted by one of its shareholders -- American Federation of State, County & Municipal Employees Pension Plan (“AFSCME”) – that, if adopted, would amend AIG’s bylaws to require AIG to include in the corporate proxy statement the names and optional

statements of candidates for director positions nominated by shareholders holding at least 3% of AIG stock. The ultimate issue in the case is whether Rule 14a-8(i)(8) permits a company in AIG's position to exclude such shareholder proposals. Copies of the briefs and the appendix in this case are being forwarded to you under separate cover. We invite you to submit to this Court an *amicus curiae* letter brief of no more than twenty (20) double-spaced pages on behalf of the Commission addressing the following questions:

1. Does the SEC Rule 14a-8(i)(8) apply to a shareholder proposal that, if adopted, would result in a bylaw amendment requiring the corporation to include in its proxy statements the names and statements of candidates for the board of directors nominated by certain large shareholders?
2. In the SEC's view, what is the scope of the election exclusion, and how are (potentially inconsistent) staff responses to no-action requests for election-related proposals since 1998 to be reconciled in light of the Commission's view as to the scope of the exclusion? *Compare, e.g., General Electric Co.*, 2001 SEC No-Act. LEXIS 68, at \*1 (Jan. 12, 2001) (denying no-action letter with respect to shareholder proposal that urged board to nominate two candidates for each director seat), *with Sears, Roebuck & Co.*, 2003 SEC No-Act. LEXIS 285, at \*1 (Feb. 28, 2003) (permitting exclusion of proxy access proposal that "would establish a procedure that may result in contested elections of directors"). *See also* Appellee's Br. 22 (arguing that purpose of exclusion is to limit costly electioneering and disruptive election contests); Harvard Law School Professors' Amicus Br. 4 (arguing that exclusion aims to allow companies to omit proposals on which shareholder could cast informed votes only with extensive disclosure).
3. What did the SEC mean when it stated, in connection with the 1976 amendment to Rule 14a-8(i)(8), that "the principal purpose of [Rule 14a-8(i)(8)] is to make clear, with respect to corporate elections, that Rule 14a-8 is not the proper means for conducting campaigns or effecting reforms in elections of that nature [i.e., "corporate, political or other elections to office"], *since other proxy rules, including Rule 14a-11, are applicable thereto*"? Proposed Amendments to Rule 14a-8 Under the Securities Exchange Act of 1934 Relating to Proposals By Security Holders, Exchange Act Release No. 34-12598, 1976 WL 160410 (July 7, 1976) (emphasis added). How does the SEC respond to Appellants' contention, supported by the Harvard Law School Professors' Amicus Brief, that this statement reflects a position the SEC held, at least in 1976, that Rule 14a-8(i)(8) permits shareholder proposed

election reforms as long as the proposal itself would not require disclosure under proxy rules other than Rule 14a-8? *See* Appellant's Br. 41-44; Harvard Law School Professors' Amicus Br. 4.

4. What "significant adjustments in the system of proxy regulation under Section 14(a) of the Securities Exchange Act of 1934," *Citigroup Inc.*, 2003 SEC No-Act. LEXIS 534, at \*2 (Apr. 14, 2003), would be required if Rule 14a-8(i)(8) were read to permit proxy access proposals such as the one proposed by Appellants?
5. What is the current status of the rulemaking process begun in 2003 with respect to a proposed new Rule 14a-11, which would expressly forbid the exclusion under Rule 14a-8(i)(8) of certain proxy access proposals? How, if at all, should the existence of this proposed rule affect the disposition of this case?
6. In the SEC's view, would a decision in Appellants' favor (*i.e.*, a ruling that Rule 14a-8(i)(8) does not permit the exclusion of proxy access proposals) preclude the SEC from further regulating proxy access proposals (*e.g.*, by passing Rule 14a-11), without first making changes to Rule 14a-8(i)(8)'s election exclusion?
7. In the SEC's view, what deference should this Court give to the SEC's letter brief?

We also invite you to address, in addition to the foregoing questions, any other concern raised in the briefs that you deem appropriate to bring to the Court's attention. Please submit your letter brief by February 10, 2006.

Should you have any questions, please call me. My direct line is 212-857-8585.

Very truly yours,

Roseann B. MacKechnie