

September 21, 2007

Nancy M. Morris  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090  
By email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Re: File Number S7-16-07

Dear Ms. Morris:

The Nathan Cummings Foundation (NCF) is a private foundation committed to the creation of a socially and economically just society. Through its endowment, currently valued at approximately \$550 million, the Foundation holds shares in a broad swath of American corporations. NCF believes that the way in which these corporations approach major public policy issues can have important implications for long-term shareholder value. The Foundation actively votes its proxies and, over the last five years, has successfully used non-binding shareholder resolutions to focus corporate attention on a number of environmental, social and governance (ESG) issues. Given our active approach to ownership, we are particularly interested in the proposal and related questions outlined in Exchange Act Release No. 34-56160.

*Bylaw Amendments Concerning Shareholder Nominations of Directors*

The Foundation believes that the current system of director elections allows shareholders no real voice in the selection of board of director candidates. In theory, shareholders have the right to select individuals to oversee a company on their behalf. In practice, however, shareholders are currently prevented from effectively exercising this important right.

We believe that granting shareholders the ability to more fully exercise their state law rights to propose bylaw amendments concerning director nominations will help to ensure that directors are more responsive to shareholder concerns. While this right is likely to be exercised on a very limited basis, we believe that the mere prospect of contested elections can have a ripple effect, leading to greater accountability and higher levels of responsiveness throughout corporate America.

While we are encouraged that the proposal outlined in Release No. 34-56160 in theory grants shareholders access to the proxy for the purpose of director nominations, we feel that as currently articulated, the proposal is unworkable. The requirement that shareholders wishing to submit binding bylaw amendments meet a 5 percent ownership threshold is simply too arduous. In addition, the disclosure requirements associated with the proposal are quite onerous, not only for proponents but also for companies. Among other things, we are concerned that the disclosure required under Item 24 of Schedule 14A would have significant adverse implications for the formation and/or continuation of productive shareholder/management dialogues on any number of issues.

*Non-Binding Proposals Submitted Under Rule 14a-8*

The Nathan Cummings Foundation believes that non-binding proposals provide shareholders with an invaluable means of communicating with corporate management on ESG issues with potential implications for long-term shareholder value. As the SEC's website notes, "By far the best way for investors to protect the money they put into securities is to do research and ask questions." ([www.sec.gov/about/whatwedo.shtml](http://www.sec.gov/about/whatwedo.shtml)) The Nathan Cummings Foundation has successfully used shareholder resolutions to do just that.

Given the effectiveness of precatory resolutions as a tool for bringing investor concerns to the attention of both corporate management and a broader universe of investors, we believe that any weakening of shareholders' rights to file non-binding resolutions is highly inadvisable. Such a move would be severely detrimental to investors' ability to effectively ask questions and gain information relating to matters with material implications for the long-term profitability of their investments.

*Opt-Out Provision*

The Nathan Cummings Foundation does not support the adoption of a rule that would permit a company or shareholders to propose and adopt bylaws to establish the procedures that a company will follow for including non-binding proposals in the company's proxy materials in lieu of current procedures established under Rule 14a-8. As others have pointed out, it is likely to be precisely those companies with the least sophisticated governance mechanisms and the most hostile approaches to shareholder engagement that will choose to opt-out.

We do not believe that it is prudent to allow companies with poor histories of investor engagement the option of opting out of the shareholder resolution process. The implications of the provision as described in the release are particularly troubling for shareholders of companies incorporated in states such as Delaware, which allow boards to amend company bylaws without shareholder consent.

Unlike Commissioner Atkins, we do not believe that non-binding resolutions distract companies from their primary business operations. In fact, shareholder resolutions often help to focus attention on ESG issues with important implications for the long-term profitability of a company's business model. Surely one of the primary objectives of any business is the development and maintenance of a profitable long-term business model.

We note that some have expressed concern that non-binding resolutions may lead to "backroom" discussions with management and that these discussions may in turn lead to the withdrawal of precatory resolutions in return for concessions that specifically benefit the proponents rather than shareholders in general. The Nathan Cummings Foundation believes that this concern is unwarranted. NCF has filed more than 30 shareholder resolutions over the last four years. Each asked only for a report to shareholders on topics relevant to long-term shareholder value, including climate change, energy efficiency and political contributions.

In virtually every instance where a resolution was withdrawn due to constructive dialogue, the company agreed only to the production of the requested report and the continuation of conversations with the proponents relating to the topics addressed in

the proposal. We believe that the information contained in reports resulting from these dialogues benefits all shareholders—not just the Nathan Cummings Foundation—by providing additional insight into a company’s plans to confront issues with possible implications for long-term shareholder value.

*Electronic Forums*

Electronic forums must not replace the use of non-binding shareholder resolutions. The Nathan Cummings Foundation does not oppose the establishment of such forums as a supplement to precatory proposals and meaningful proxy access reforms but there are many questions which would need to be addressed prior to the establishment of such forums.

*Submission Thresholds*

The Nathan Cummings Foundation does not believe that the requirements for resubmission of non-binding shareholder resolutions in subsequent years should be amended. As others have noted, initial support for resolutions focusing on new issues is frequently quite low and it can take several years for a proposal to reach support levels above 20%. For instance, resolutions focusing on climate change now routinely receive well over 20% of the vote. In the 1990s though, resolutions focusing on climate change rarely received support of even 10%. We believe that it is important that the current resubmission thresholds remain unchanged so that emerging issues with potentially critical implications for shareholder value have sufficient time to gain the support and understanding of investors.

*Conclusion*

The Nathan Cummings Foundation urges the SEC to avoid the hasty adoption of the proposals outlined in either Release No. 34-56160 or Release No. 34-56161. We feel that decisions of this magnitude deserve the full and careful consideration of a complete set of commissioners. Given the imminent departure of Commissioner Campos, we believe it would be unwise for the Commission to undertake changes of such importance at this time.

We thank you for the opportunity to comment on this release. Should you have any questions, please do not hesitate to contact us at 212-787-7300.

Sincerely,

Lance E. Lindblom  
President, Chief Executive Officer & Trustee

Laura J. Shaffer  
Director of Shareholder Activities