State of Connecticut
Office of the Treasurer

DENISE L. NAPPIER
TREASURER

HOWARD G. RIFKIN
DEPUTY TREASURER

Testimony of Donald A. Kirshbaum, Investment Officer for Policy
Connecticut State Treasurer's Office
Before the Committee on Financial Services, U.S. House of Representatives
Hearing on Pending Proposed Rulemakings Issued by the Securities and Exchange Commission to Amend the Proxy Rules Relating to Shareholder Proposals
September 27, 2007

Good morning, Chairman Frank, Ranking Member Bachus, and Members of the Committee on Financial Services. My name is Donald Kirshbaum. I am Investment Officer for Policy in the Office of Connecticut State Treasurer Denise L. Nappier. Treasurer Nappier is the principal fiduciary of the $26 billion Connecticut Retirement Plans and Trust Funds (CRPTF), and is responsible for prudently managing the retirement funds for approximately 160,000 teachers and state and municipal employees who are pension plan participants and beneficiaries. I am pleased to appear before you today on behalf of Treasurer Nappier. I have brief prepared remarks and would respectfully request that the full text of my statement and all supporting materials be entered into the public record.

The voters of Connecticut have elected Treasurer Nappier to this office three times. Since taking office in January 1999, the Treasurer has been actively involved in corporate governance issues through engagement with companies and in the public policy arena. Treasurer Nappier considers proxy voting a plan asset, and uses communication with companies in which the CRPTF invests – including proxy voting and filing shareholder resolutions – as one mechanism to protect and enhance the value of the pension fund's assets. The Investment Policy Statement of the CRPTF, adopted by our Investment Advisory Council, states, "Plan fiduciaries have a responsibility to vote proxies on issues that may affect the value of the shares held in a portfolio since proxies are considered plan assets and have economic value."

Today's hearing addresses two pending proposed rulemakings issued by the Securities and Exchange Commission (SEC) to amend the proxy rules relating to shareholder proposals – specifically File No. S7-16-07, and File No. S7-17-07. Treasurer Nappier has submitted comments to the Commission on these proposed rules, and they are attached as part of this testimony.

These proposals address an aspect of the election of corporate directors. The election of directors is one of the most important stock ownership rights that shareholders can exercise, and it reverence for that right that is the context for the comments I will make here this morning.

Before addressing specific questions relating to the two specific SEC proposals, let me provide a little background that will help explain the context for Treasurer Nappier's comments on these two rules.

As a pension fund – investing for the benefit of employees who will be collecting benefits many years from now – we are a long term investor. Our asset allocation is spread over a number of asset classes. With respect to investments in public equity, we are very diversified, and have a significant portion of these assets in core index funds. This means that we are long term investors in many of the companies in which we invest – and that includes all of the companies in the S&P 500, for example.

Most other public pension funds also take this approach – which has a direct impact on the questions before the committee this morning.

The two rules that the SEC is currently soliciting comments on – and are the subject of today's hearing – address the concept known as "Access to the Proxy", and several other related issues. This is not a new issue. The Commission has tried to address the issue in the past, most recently under Chairman Donaldson. However, we are no closer to a new workable rule today than we were back then.

While the proposed rules are long and complex, the concept of Access to the Proxy is a simple one. Access to the proxy would provide a mechanism for an investor – or group of investors – who meet certain ownership criteria, to nominate several members for election to the Board of Directors, and those nominees would appear in the company's proxy and on their proxy card.

Why do we need this mechanism?

In general, under state corporate law (and each state has its own different laws), shareholders can run a challenge slate to a company's nominees for the Board of Directors. This slate can present a challenge for each board seat being elected, or be a "short slate" of only a few challengers. In the first case, the challenge slate could take over the running of the company, and in the second the challengers, if elected, would join other board members nominated by the company.

The problem is that this challenge must be run on a separate proxy card, with significant costs involved. This can work for an investor whose goal is to gain control of or change the direction of the company or a hedge fund that is building a large financial stake in the company – often looking for a short term financial gain, that justifies this expense.

For investors such as the CRPTF our goals are different, and this process doesn't work for us – thus the concept of access to the proxy. With respect to the Board of Directors our goals are a well functioning board that oversees management and the operation of the company on behalf of its owners. In cases where this is not happening, we need a mechanism to elect some new board members to move the company back in the right direction. The goal is NOT to take over the company – thus access to the proxy is for a small number of board seats – one to three, depending on the size of the board.

The other side of the issue is cost. We are long term investors, we have small stakes in many companies, and we are not looking for short term gain that could justify the large cost of running a proxy contest.

Treasurer Nappier is encouraged that SEC Chairman Cox agrees with us in concept. However, the precise mechanism contemplated by the long rule would be unworkable (in ways I will later address) and ultimately would be of little benefit to shareholders such as the CRPTF – or for that matter even the largest public pension funds such as CalPERS. Treasurer Nappier is hopeful about working with the Commission to create an access to the proxy rule that can work.

Boards of Directors are elected by shareholders and oversee the management of the corporation on behalf of the shareholders. Most board members perform their jobs very well and most boards do a good job on behalf of the shareholders who elect them. However, when shareholders believe boards are not acting in the best interests of shareholders there are some things we can do – but nominating replacement directors is not one of them.

The Office of the Connecticut State Treasurer has had extensive experience with access to the proxy, and related shareholder activity. For example, you are all aware of the problems on the Hewlett-Packard board several years ago. To say the board members were not working well as a team is an understatement. When the opportunity arose to file an access to the proxy resolution (after the court ruled the SEC could not permit such a resolution to be excluded), Treasurer Nappier joined with state pension funds from North Carolina and New York, and the AFSCME Employees Pension Plan in filing such a resolution. The resolution received broad shareholder support – 43% of shareholders voting supported the resolution. That size vote shows that this is not a fringe idea – it is a concept that is being supported by mainstream investors.

Two other proposals were also submitted in the 2007 season—one received majority support, while the other was supported by 45% of shareholders voting. There has not been a tidal wave of resolutions; the focus is on companies where the board needs attention. This shows shareholder moderation in filing resolutions, and foreshadows what we believe will be a limited, responsible use of this prospective shareholder right.

There some other ways Treasurer Nappier is working to make board members more responsive to their shareholders. Treasurer Nappier has been promoting majority vote for election of directors in non-contested elections, and many companies are moving toward this standard. Treasurer Nappier is also promoting “Say on Pay”, a concept embraced by this committee in legislation which passed the House this year by a 2-1 margin, and has been introduced in the Senate.

We can, and have, withheld votes – or voted against - re-election of specific board members. We have been doing that to express our lack of confidence in the performance of some compensation committee members, and with some CEOs (some of whom have been replaced). What we cannot do is vote yes – for a new replacement board member. That is the access to the proxy initiative.

In addition to access to the proxy, one of the pending proposals also asks a series of questions relating to advisory shareholder resolutions, as well as proposes electronic company-shareholder forums. Let me now speak to some questions posed in your invitation to testify, which addresses these other issues, and some broader questions as well.

Does the shareholder proposal process need to be changed?

While the shareholder proposal process in general is working well, there are a number of areas where it could be changed to better protect shareholder rights. One is the implementation of a workable access to the proxy rule. Another would be to limit the SEC staff's ability to permit companies to omit certain resolutions. There are many issues that should be brought to shareholders that are routinely excluded under an exclusion called "ordinary business". Another area has already been addressed by this committee – and the full House – regarding say on pay. Another area (with a pending proposed solution being considered by the SEC) is eliminating broker votes, where brokers vote when the shareholder has not submitted their proxy.

Should the types of shareholder proposals that can be included on a management proxy be expanded, or should there be restrictions beyond those in the current rules? Does it make a difference if the proposal is binding or non-binding?

As mentioned above, Treasurer Nappier supports including annually a resolution that asks shareholders to cast an advisory vote on the company's compensation plan – say on pay. Also, many resolutions requesting evaluation of risks are currently excluded under the "ordinary business" rule.

The "short rule" would essentially restrict the ability of shareholders to file shareholder resolutions on access to the proxy. Treasurer Nappier opposes this proposal.

The "long rule" would be an expansion of the types of shareholder resolutions permitted on the proxy and would provide, under certain conditions, that shareholders could file access to the proxy resolutions. Treasurer Nappier supports the intent of this proposal. However, the precise mechanism contemplated by the proposal would be unworkable and ultimately of little benefit to shareholders, and we therefore oppose its adoption.

The “long rule” also poses questions for comment about imposing new restrictions on advisory shareholder resolutions in general. Treasurer Nappier opposes any limitation on shareholders’ ability to file such resolutions. Please see the attached letter to the SEC for a discussion of our rationale.

Addressing the question on the difference between binding and non-binding resolutions, yes, there is a significant difference between binding and non-binding resolutions. Binding resolutions can address structural issues, such as amendments to the by-laws. Non binding resolutions – which are the vast majority of those filed by shareholders - address a myriad of important issues, and are an avenue of communication. These resolutions are a way to bring to all shareholders of a company an issue that some of the company’s shareholders believe is important to the value of their investment. It is also an avenue to opening of useful dialogue between shareholders and corporate management and board members.

Should shareholders be allowed to include matters related to director nominations on a management proxy? Does it make a difference if the proposal is a bylaw amendment regarding nomination process, rather than a director nominee or nominees?

Treasurer Nappier supports shareholders being allowed to include matters related to director nominations on a management proxy.

There are two steps to make this happen – first setting the rules for shareholders to nominate directors, then the nomination process itself. That rules could be set out in the proxy rules (as proposed under SEC chairman Donaldson), or could be set out in the by-laws of each company. The current proposal is for shareholders (meeting certain criteria) to propose a by-law amendment that would permit access to the proxy. If this amendment is approved by shareholders, then the process would be in place. Then that amendment would govern the nomination process.

Is it reasonable to exclude non-binding shareholder proposals from management proxies? If there is no such change in the proxy rules, should companies have the ability to “opt-out” of the requirement to include non-binding shareholder proposals on their proxies?

With respect to the first question, Treasurer Nappier opposes any limitation to shareholders rights to file non-binding shareholder resolutions under section 14a-8.

With regard to the “opt-out” provision, it would take a change in the proxy rules to permit companies to “opt out”. Treasurer Nappier opposes any such change in the proxy rules that would permit companies to opt-out of this process. Please see the attached letter to the SEC for a discussion of our rationale.

Is the 5% ownership threshold proposed by the SEC for submission by shareholders of director nomination proposals reasonable? If not, why not? Should there be other limits on shareholder access to management proxies, such as holding periods or dollar thresholds?

The 5% ownership threshold for submission of director nomination proposals is unworkable. As a pension fund – investing for the benefit of employees who will be collecting benefits many years from now – we are a long term investor. As mentioned above, our asset allocation is spread over a number of asset classes, we are very diversified, and have a significant portion of these assets in core index funds. We are long term investors in many companies.

Also as mentioned above, most other public pension funds take this approach. The fact that we are long term investors in the broad US equity market means that even a significant group of investors will not hold 5% of the outstanding stock of any company. For example, our largest holding currently is Exxon Mobil 3,674,864 shares with market value $338,418,225. However Exxon Mobil's market capitalization is $514 billion. Our holdings represent 0.07% - that is seven one-hundredths of one percent. Another way to look at this is that 5% of ExxonMobil stock is worth over $25 billion – which is the size of our entire pension fund.

The only investors who would be able to use the rule would be the large investment managers – such as Barclays Global Investors which owns 4.57% of Exxon Mobil Shares.[1], hedge funds, or an investor who builds a significant stake in the company looking to either take over the company, or put pressure on the company to make certain operational or financial changes, resulting in a short term gain.

Holding periods are a much better indicator of shareholders who are interested in the long term performance of the company, and the one year holding period in the proposed rule is reasonable.

On behalf of Treasurer Nappier, thank you for this opportunity to share our views with the Committee on these important issues. If we may be of further assistance to the Committee, please do not hesitate to contact us.

[1] Yahoo Finance website as of September 21, 2007.

State of Connecticut
Office of the Treasurer

DENISE L. NAPPIER
TREASURER

September 25, 2007

Nancy M. Morris, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File No. S7-16-07
File No. S7-17-07

Dear Ms. Morris,

As principal fiduciary of the $26 billion Connecticut Retirement Plans and Trust Funds ("CRPTF"), I herewith submit comments concerning Proposed Rules S7-16-07 and S7-17-07 which would amend certain provisions of the Securities Exchange Act of 1934 governing shareholder proposals related to director elections.

I very much appreciate the opportunity to share with the Commission the perspective of an institutional investor with holdings in more than 2,100 publicly-traded companies. The election of directors is one of the most important stock ownership rights that shareholders can exercise -- and it is with reverence for that right that I express my concerns over key elements of the proposed rules, as summarized below and explained in more detail in the attachment.

- Proposed Rule S7-17-07 (a.k.a. the "short rule") would deny shareholders the ability to use the shareholder proposal rule to communicate with other shareholders regarding access to the company proxy statement, and would essentially close the avenue opened to shareholders in *AFSCME v. AIG.*[1] For this reason, I oppose this rule.

- The concept of shareholder access to the proxy, as set forth in Proposed Rule S7-16-07 (a.k.a. the "long rule") is a sound one. I oppose, however,

[1] *American Federation of State, County and Municipal Employees, Employees Pension Plan v. American International Group, Inc.*, 462 F.3d 121 (2d Cir. 2006).

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the precise mechanism contemplated by the long rule because it would be unworkable and ultimately of little benefit to shareholders.

- Electronic Shareholder Forums, as described in the long rule, is a similarly sound concept that can augment existing shareholder-corporate communication. The rule as currently drafted, however, if combined with other changes to the proxy rules, could potentially limit the rights that shareholders currently enjoy. If this rule were to be construed as replacing existing shareholder rights currently allowed under the proxy rules, I would oppose this provision.

- The limitation of shareholders' ability to file non-binding advisory resolutions under Rule 14a-8, as discussed in the long rule, is of great concern to institutional funds such as ours. This aspect of the long rule could pose a major setback in the more than 65-year history of communications between shareholders and management. It is on these grounds that I oppose any limitation to shareholders' ability to file shareholder resolutions under Rule 14a-8.

Thank you very much for affording investors the opportunity to share their views with the Commission on these important issues. If I may be of further assistance to you or the Commission, please do not hesitate to contact me.

Sincerely,

Denise L. Nappier
State Treasurer

Enclosure

The Following Statement Accompanies the 9-25-07 letter from Connecticut State Treasurer Denise L. Nappier to Nancy M. Morris, Secretary, U.S. Securities and Exchange Commission (SEC)

Re: File No. S7-17-07
File No. S7-16-07

Summary of Comments

File S7-17-07 (the "short rule") would essentially close the avenue opened to shareholders in AFSCME vs. AIG. We oppose this proposal. The proposal would deny shareholders the ability to use the current shareholder proposal rule to communicate with other shareholders regarding the desirability of affording shareholders access to the company proxy statement. In our corporate governance system, which places so much authority and discretion in the hands of the board of directors, the accountability of the board to shareholders is of paramount importance. The SEC should not prohibit shareholders from putting forward reasonable proxy access proposals at companies where shareholders believe such a reform would enhance long-term value.

The SEC's other proposal S7-16-07 (the "long rule") would permit holders of over 5% of a company's shares to submit a binding proxy access proposal and represents an improvement over its proposal simply to ban these resolutions. We support the intent of this proposal. However, the precise mechanism contemplated by the proposal would be unworkable and ultimately of little benefit to shareholders, and we therefore oppose its adoption. We encourage the SEC to work with shareholders to craft a workable rule that permits meaningful shareholder communication and the ability to implement proxy access while ensuring that the Commission's other proxy rules are not circumvented.

With regard to the SEC's request in the long rule for comment on possible changes to the advisory shareholder resolution process currently in place under Rule 14a-8, we urge the Commission not to limit in any way shareholders' rights to submit non-binding proposals under this rule. For 65 years, non-binding proposals have effectively promoted communication between shareholders and management (as well as among shareholders) and facilitated nuanced, market-driven changes in corporate governance practices. The elimination of outside director pensions and the adoption of majority voting standards for director elections are two examples of significant changes in the governance landscape effected by non-binding shareholder proposals.

With regard to the proposal to change the proxy rules to permit companies to create electronic forums for its shareholders, we can support this as a potential enhancement to existing communication avenues. However, we would oppose it if it were to substitute for any shareholder rights currently in the proxy rules.

<u>Advisory Shareholder Resolutions—The Long Rule</u>

In the long rule the SEC is soliciting comments on possible changes in the proxy rules with respect to advisory shareholder resolutions currently governed by rule 14a-8.

The current Commission's Rule 14a-8, the shareholder proposal rule, requires companies to include in the company proxy statement, shareholder resolutions submitted by shareholders who satisfy the rule's procedural and substantive requirements. The rule is intended to ensure that shareholders' state-law rights to put shareholder resolutions before other shareholders remain intact in a system of proxy voting in which shareholder voting takes place before the meeting. The rule was intended "to give true vitality to the concept of corporate democracy," according to the Court of Appeals for the D.C. Circuit.[1]

The shareholder proposal rule has contributed a great deal to the dialogue over corporate governance and to the proliferation of value-enhancing governance reforms during the 65 years of its existence. The company-specific nature of shareholder resolutions affords some important advantages: first, it allows both shareholder resolutions and settlements to be tailored to individual companies' circumstances. For instance, at a company where unreasonably high CEO compensation is driven by stock options, a proponent might submit a shareholder resolution asking that options be performance-based; another company where CEO compensation consists primarily of a large annual bonus might receive a shareholder resolution aimed at making performance targets more challenging. In addition, company-specific shareholder resolutions allow the shareholders of a particular company—the group with the strongest incentives to favor value-maximizing reforms—to decide whether a proposed reform makes sense at the company.

Further, the non-binding nature of most shareholder resolutions confers benefits. It is not unusual for proponents and companies to discuss the subject of a shareholder resolution, sometimes at length, before or after the shareholder resolution comes to a vote. This process can be educational for both parties, and a proponent may realize that a compromise solution is superior to the original shareholder resolution formulation. With a non-binding shareholder resolution, even a shareholder resolution that is passed by shareholders need not be implemented precisely as drafted.

The Connecticut Retirement Plans and Trust Funds' (CRPTF) own experience with shareholder resolutions illustrates these broader points. In the past three proxy seasons, the CRPTF was the primary filer of 11 shareholder resolutions and co-filed 24 shareholder resolutions. A number of these shareholder resolutions led to dialogue with the companies, and the CRPTF withdrew some of the shareholder resolutions before the proxy statements were issued. At Walt Disney Company, for example, the company agreed to formalize its policy regarding the separation of the chairman and CEO positions following a 2004 shareholder resolution submitted by the CRPTF. Similarly, both

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[1] <u>Medical Committee for Human Rights v. SEC</u>, 432 F.2d 659, 676 (D.C. Cir. 1970).

American Electric Power and Ford Motor Company agreed to produce reports to shareholders on climate change in response to shareholder resolutions submitted by the CRPTF.

As a result, we view with concern any effort by the Commission to limit shareholders' ability to submit shareholder resolutions. Shareholder resolutions serve as the vehicle for promoting constructive dialogue and yields governance reforms that increase shareholder value. We are concerned that eliminating advisory shareholder resolutions could create an unintended consequence where the only option open to shareholders would have inflexible consequences, such as voting against director nominees, or submit more binding shareholder resolutions that take effect immediately upon adoption rather than after negotiation. This outcome that would not be desirable from the corporate or shareholder perspective. There is no reason to believe that the process, as currently constituted, has broken down to such an extent that this kind of change is warranted.

Proxy Access Shareholder Proposals—The Short and Long Rules

The concept of access to the proxy is addressed in both the short rule, and the long rule.

Shareholder access to the company proxy statement for the purpose of nominating director candidates has emerged in the past several years as a compelling solution to the collective action problem common to widely-held public corporations. By allowing significant, long-term shareholders to nominate director candidates using the company's proxy materials, proxy access decreases the cost of mounting such challenges. Facilitating short slate challenges, but not efforts to obtain control of the board, also reduces reliance on control contests as a means of addressing underperforming boards. For these reasons, we supported the Commission's 2003 rulemaking proposal that would have created a limited proxy access right for significant long term shareholders of public corporations.

Since the Commission abandoned that rulemaking, shareholders have sought to promote proxy access at specific companies using the shareholder proposal rule. These proposals would establish generic procedures for use in future elections and have been submitted in binding and non-binding forms. We joined with other investors, including state pension funds in North Carolina and New York and the AFSCME Employees Pension Fund in submitting such a resolution at Hewlett Packard (HP). The resolution was supported by 43% of HP's shareholder. Two other proposals were also submitted in the 2007 season—one received majority support, while the other was supported by 45%. This shows that proxy access is not a fringe or radical issue – but one supported by large main stream investors.

Prior to the 2007 proxy season, the Staff of the Division of Corporation Finance permitted exclusion of such resolutions using an interpretation of Rule 14a-8(i)(8) (the "Election Exclusion") that the court found inconsistent with SEC rules, and therefore improper. It is this Staff interpretation the Commission has now proposed to codify in the "short rule" in response to the holding in AFSCME v. AIG. Doing so does not make sense as a matter of interpretation or policy, and therefore adoption of the short rule is unnecessary. We therefore oppose adoption of the short rule.

A proxy access regime need not conflict with the proxy rules. Indeed, the proposal at issue in the AFSCME v. AIG case required that shareholders availing themselves of the access right comply with all of the Commission's rules, including the proxy rules. This fact, along with the requirement that company proxy statements (including those containing shareholder-nominated candidates) comply with the proxy rules, led the AFSCME v. AIG court to question the existence of a conflict between a proxy access right and the proxy rules, as had been alleged by both AIG and the Commission in its brief. Moreover, the Commission's solution to this perceived conflict in the short rule is far broader than necessary: The concern could be addressed by amending the Election Exclusion to provide that companies may exclude proxy access proposals that do not contain language requiring the nominating shareholder to comply with the proxy rules, and/or provide whatever information the Commission deems necessary.

It is worth noting that Comverse Technology, Inc. has amended its bylaws to create a shareholder proxy access right requiring that nominating shareholders agree to comply with all laws and regulations. Developments like this suggest that amendment of the proxy rules to reflect the possibility of shareholder-nominated directors on the company proxy statement—independent of any process under Rule 14a-8--would be useful.

The Commission has stated in the context of these rulemakings that one of its goals is facilitating shareholders' exercise of their state-law rights. The interpretation of the Election Exclusion proposed in the short rule is less, not more, faithful to shareholders' state-law rights than the interpretation advanced in the 1976 Release and by the court in AFSCME v. AIG. The law of most states, including Delaware, allows shareholders to amend the bylaws absent a limitation in the charter or bylaws. The permissible subject matter of bylaw amendments depends on state statutory and case law delineating the scope of the board's power vis a vis shareholders. The bylaw proposed in the AFSCME v. AIG case was supported by an opinion of Delaware counsel stating that a Delaware court would likely hold that the bylaw was proper under state law. It is not appropriate to suggest that prohibiting shareholders from submitting proxy access proposals that would otherwise be proper under state law somehow protects shareholders' state-law rights.

The 5% Proposal – The Long Rule

In the long rule, the Commission has proposed to prohibit all proxy access proposals except those that satisfy a set of stringent criteria, including ownership of more than 5% of the company's outstanding stock for one year, submission of a binding proposal and compliance with extensive disclosure requirements. The rule as currently proposed would be unusable by long-term, diversified shareholders such as the CRPTF and would impose recordkeeping and disclosure burdens well beyond any informational benefits to shareholders.

As an initial matter, the logic for requiring greater ownership for proxy access proposals is unclear. A proxy access proposal, if successful, would not have any different level of impact on a company's governance arrangements than a bylaw amendment dealing with a poison pill, supermajority voting requirement or majority voting for director election. Moreover, other shareholders respond not to the holdings of the proponent but to the merits of the proposal when voting on it.

But even assuming that a higher threshold is appropriate, the requirement proposed by the Commission is too high. Especially at larger public companies, the requirement that proponents own more than 5% of a company's outstanding shares ensures that diversified shareholders like the CRPTF would not be eligible to submit a proxy access proposal, even if it joined with several other similar holders. For example, the CRPTF's largest holding is ExxonMobil – where the value of ALL of the CRPTF assets - $25 billion – is equal to 5% of the current value of Exxon Mobil. More broadly, based on information compiled from FactSet Research Systems, Inc., if the 10 largest public pension fund holders of Exxon Mobil Corporation (a large-cap stock), Precision Castparts Corp. (a mid-cap stock), and The Manitowoc Company, Inc. (a small-cap stock) were to aggregate their ownership interests, the resulting percentage holdings for those shareholder groups would be approximately 3.01, 3.59, and 3.56, respectively.

The Commission should study the pattern of institutional shareholdings before settling on a threshold, rather than adopting a threshold that fits into an existing (but unrelated) regulatory structure.

Disclosure Requirements – The Long Rule

The disclosure requirements proposed in the long rule go far beyond anything shareholders would find useful in voting on a proxy access proposal. As with the ownership threshold, it is not clear that any additional disclosure is warranted simply because a proposal concerns proxy access. The proposal itself would not change the board's composition, that could only occur if the resolution were adopted, and then candidates were nominated by shareholders for the board the ensuing year. Also, submission of a proxy access proposal does not indicate an intention to use the proxy access right. Thus, disclosures aimed at shedding light on the motivation, history and relationships with the company and other similar matters of those filing a resolution to enact access to the proxy are not warranted. Institutional proxy voting guidelines, which focus on the substance of the proposal, suggest that this kind of information would not be used by institutional shareholders in making voting decisions on proxy access proposals.

We are concerned that the disclosures as currently drafted could impair the dialogue and negotiation process between companies and shareholders that currently take place and which both shareholders and corporate leaders have found to be very beneficial. One element of the long rule proposal would require a shareholder that files a proxy access proposal to disclose details regarding each communication with the company for a 12-month period before the proposal was filed. Thus, a shareholder that has not foreclosed the possibility of filing a proxy access proposal – or participating with other shareholders in such a filing - at any company at any time would face the burden of documenting every communication with every company with which it is communicates. The long rule would require companies to make similar disclosure in its proxy statement regarding communications and relationships with proxy access proposal proponents. In addition, we are concerned that the potential liability for even minor errors in the required 13G disclosure filings would be a significant disincentive to participation in this process.

The proposal to disclose ownership of a competitor's stock fails to recognize that diversified shareholders like the CRPTF, which use passive as well as active investment strategies, usually are required by their asset allocation plans to own the stock of several companies in the same line of business. The disclosure requirements relating to ownership in competing companies will not provide any useful information to shareholders voting on a access to the proxy resolution. Like the requirement to disclose communications with the company, this requirement would be too burdensome and would not give shareholders information of any value in the voting process.

Finally, the proposed requirement that proponents disclose information about individuals "associated with" the plan to submit a proxy access proposal has no relationship to the voting process. This requirement, which includes disclosures regarding the selection process for and qualifications of the person(s) who participated in the decision to submit the proposal, is overly intrusive and would not provide information of value to shareholders making voting decisions. The proposal is to be voted on based on its merits, not a particular educational credential or fiduciary duties to beneficiaries of the proponent. Indeed, considering such information, which has no bearing on the merits of the proposal, might itself violate fiduciary duties to which an institutional shareholder is subject.

Electronic Forum – The Long Rule

The long rule also proposes changes to the proxy rules to facilitate electronic fora. We believe that electronic fora could serve a useful function by enhancing communication between companies and their shareholders, as well as communication among a company's shareholders. For that reason, we support efforts to develop electronic forums and to clarify the Commission's rules to remove regulatory barriers to participation.

However, there are a number of weaknesses in the electronic forum when compared directly to the advisory resolution process. Voting proxies is a fiduciary duty. Participating in the forum is not. The forum will not be a solicitation to all shareholders to address every issue, while the proxy statement is an opportunity (and a fiduciary duty) for all shareholders to vote. The beginning paragraphs of this section of the proposed rule note the goal of "efficient means of shareholder communication with management".

Shareholder resolutions are a communication with the Board. The Board issues statements in opposition, and therefore reviews all issues raised in the proxy. The forum, while it could involve board input, does not require it. It is the board – not management – who are elected by shareholders to represent their interests. The rule suggests tabulating certain comments. Without a specific request to ALL shareholders to weigh in on an issue, a tabulation only shows the results of a self-selected subset of shareholders. While communication throughout the year is a good thing,it is not a substitute for an annual vote on issues, such as election of the board, and voting on resolutions. The annual proxy (with specific lead time for review of issues) continues to be the best way to solicit the opinion of ALL shareholders on any issue.

For these reasons, substituting electronic fora for inclusion of proposals in proxy statement would curtail shareholders' rights and remove the leverage of a shareholder vote without which some companies will refuse to act.