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SBA Endorses SEC's Proxy Access Proposal

Tallahassee, FL—In its comment letter submitted to the Securities and Exchange Commission today, the Florida State Board of Administration (SBA) praised the Commission's proposal to establish new rules that create "facilitated nominations" for shareowners, otherwise known as proxy access. The SBA believes these rules are necessary to enhance shareowner rights and strengthen the ability of owners to monitor companies and their boards of directors. The proposal will allow investors to take important steps to protect their investments. The SBA manages its investments on behalf of over one million participants, beneficiaries, and retirees of the Florida Retirement System.

"The board of directors is the cornerstone of governance. Everything flows from there." said Ash Williams, Executive Director & CIO of the SBA. "This proposal is groundbreaking through its support of the investors' role in nominating board members, which will create better elections and better boards. We support this proposal for the value it will create at our companies."

Proxy access is a mechanism that shareowners can use to place their own nominees for the board of directors on the company's agenda. Historically, the shareowner has had little recourse in affecting board change without resorting to an expensive proxy contest. These barriers have limited the ability of investors to place their own nominees for representation. By acknowledging the flaws in the current options, the Commission is paving the way to provide additional legal means to investors.

In drafting the release, the SEC noted many stakeholders had previously argued that competition for board seats could lead companies to nominate directors who are better qualified and more independent. Without competition, directors may be less accountable to shareholders and may lose sight of their proper role as representatives of the company.

The proposed SEC rules will facilitate the nomination process in two ways. Proposed Rule 14a-11 would allow shareowners who meet certain eligibility standards to submit nominees for up to 25 percent of the board seats to the company. The company would be required to include these nominees in its annual proxy documents along with a statement from the nominating shareowner or group. The nominees would still have to win the election of all shareowner votes to gain a seat on the board.

The proposal also includes an amendment to Rule 14a-8(i)(8), known as the election exclusion, which would be changed to allow shareowners to amend or request an amendment to the company's governing documents concerning elections. This could allow the shareowners

of a company not subject to Rule 14a-11 to vote to adopt similar rights, or it could be used at any company to propose election or nominating criteria that go beyond the requirements of Rule 14a-11.

In its letter supporting the rules, the SBA highlighted the need for facilitated nominations and the ability of owners to submit proposals governing the election process. The Commission's choice to allow groups to act in concert is especially important, given the high levels of ownership required to submit nominees. This also helps assure that the nominees will be of considerable broad appeal and prevents special interests.

To use facilitated nominations under Rule 14a-11, the shareowner or a group of shareowners would have to prove ownership of significant amount depending on the company market value of one, three, or five percent, and the holdings must have been held continuously for at least one year. Certain disclosures concerning the nominating shareowners and their nominees would be required as well. To prevent a flood of candidates on each ballot, the Commission's proposal would allow only the first submission of nominees to a company to appear on the ballot.

The SBA believes the ownership eligibility requirements will ensure that the rule is used responsibly while providing fair access to owners. The right to nominate is an essential complement to the right to vote and a prerequisite to legitimate elections. In its comments, the SBA offered suggestions to improve the effectiveness of facilitated nominations including:

- ✓ Broader application for Rule 14a-11.
- ✓ An amendment to require the use of plurality voting when Rule 14a-11 is invoked.
- ✓ The use of net holdings for determining eligibility and making disclosures, which reveals alignment of economic and ownership interests by disclosing hedges or financial engineering.
- ✓ An alternative to the "first in" nominee submission procedure.

The SBA frequently provides comments to the Commission on proposed rules affecting all types of corporate governance provisions, exchange listing standards, and disclosure enhancements. Although no effective date is outlined in this proposed release, the SBA urged the Commission to implement the new rules as quickly as possible. The SBA's letter can be found at the SEC's website, www.sec.gov.

The State Board of Administration is an agency of Florida state government that provides a variety of investment services to various governmental entities. These include managing the assets of the Florida Retirement System Trust Fund, the Lawton Chiles Endowment Fund, the Local Government Surplus Funds Trust Fund (Florida PRIME), the Hurricane Catastrophe Fund, and a variety of other mandates. The SBA currently invests in eight asset classes: Domestic Equities, Foreign Equities (both developed and emerging markets), Fixed Income, High Yield, Private Equity, Strategic Investments, Real Estate, and Cash.

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