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August 18, 2010

OVERNIGHT MAIL

Meredith Cross, Director
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Ms. Cross:

I am writing to thank you for inviting CalPERS to participate in the informal roundtable held July 12, 2010, regarding the shareowner proposal process. We know that you and your staff are extremely busy so we are very appreciative of you taking the time to meet with your stakeholders.

We are writing to follow up regarding one of the points that was raised during the meeting: the interaction between Rule 14a-8 shareowner proposals and company annual meeting procedures. We have observed that companies are increasingly seeking to prevent the presentation of otherwise valid shareowner proposals based on challenges based on companies' annual meeting procedures.

CalPERS' Recent Experiences with the Improper Use of Meeting Procedures to Prevent the Presentation of Validly Submitted Shareowner Proposals

In each of the past two years, one of the companies to which we have submitted shareowner proposals has sought to prevent us from presenting our shareowner proposals based on claims that we failed to comply with its annual meeting procedures. In each case, after submitting the shareowner proposal, we requested that the company provide us with a copy of any annual meeting procedures to which we would be subject in presenting our proposal. Further, in each case we engaged outside counsel to review the company's meeting procedures, as well as the company's articles of incorporation and bylaws.

Based on our review and the advice of our counsel, we provided the company with information required by the company's meeting procedures, the company's articles of incorporation and bylaws, as well as information regarding the person who would attend the meeting on our behalf. At the time that we submitted the information, the company gave us no indication, despite repeated requests, that we had not complied with any requirement imposed by its meeting procedures, articles of incorporation or

bylaws. In each case, notwithstanding our compliance with the company's articles of incorporation, bylaws and meeting procedures, the company raised vague objections to our presentation of the shareowner proposals, *during the meeting*, ostensibly based on state law. In the 2010 proxy season, the company eventually relented and deemed the proposal to be properly presented after being threatened with legal action. In 2009, the company asserted that the proposal was not properly presented on the basis that our representative had failed to present a proxy (notwithstanding contrary advice from our counsel). The 2009 proposal received 75% of the votes cast, while the 2010 proposal received approximately 91% of the votes cast.

Other Shareowner Experiences with the Improper Use of Meeting Procedures to Prevent the Presentation of Vaidly Submitted Shareowner Proposals

CalPERS is not the only shareowner to have experienced the improper use of meeting procedures during the 2010 proxy season. A recent article by RiskMetrics describes another instance in which a company attempted to use vague meeting procedures to exclude an otherwise validly presented shareowner proposal. In that article, entitled "Devon Energy Drops Objection to Shareholder Proposal" RiskMetrics describes Devon Energy's attempts to prevent the presentation of a shareowner proposal seeking to repeal the company's supermajority standards in its governance documents. The proposal in that letter was from John Chevedden, a frequent participant in the shareowner proposal process. Apparently his representative appeared to present the proposal, however based on the company's annual meeting procedures, the chair of the meeting asked if anyone would second the proposal. No one spoke up to second the proposal, and thus a formal vote on the resolution was not called. The results for that agenda item were not reported by the company's inspector of elections. After Mr. Chevedden sent a letter to Devon protesting its decision, Devon reversed course and reported that Chevedden's proposal received 72% support.

Legal Implications of Improper Use of Annual Meeting Procedures

The SEC adopted Rule 14a-8 based in part on the SEC's understanding that shareowners have the right under state law to appear at annual shareowner meetings and present matters of interest to other shareowners from the floor of the meeting. Based in this understanding, we appreciate that the rights afforded by Rule 14a-8 are not absolute and are bound by state law. Nevertheless, it is well established that a company may not employ its bylaw provisions or meeting procedures to dilute the rights that shareowners have been given to submit shareowner proposals and have such proposals considered by other shareowners at annual shareowner meetings. This view has been expressed by the Third Circuit in the *Transamerica* case, and in several recent SEC no-action letters. See *SEC v. Transamerica*, 163 F.2d 511 (3rd Cir. 1947) ("If this minor [bylaw] provision may be employed as Transamerica seeks to employ it, it will serve to circumvent the intent of Congress in enacting the Securities Exchange Act of 1934."); see also Dollar Tree Stores SEC No-Action Letter (Mar. 7, 2009)(rejecting arguments by Dollar Tree that a shareowner proposal be excluded in

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reliance on Rule 14a-8(i)(1) on the basis that the shareowners failed to comply with Dollar Tree's advance notice provisions).

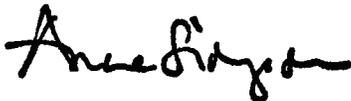
In addition to the fact that the inappropriate conduct discussed above is inconsistent with the *Transamerica* case and recent no-action letters, we believe that such conduct violates Rule 14a-9, which prohibits material false or misleading statements and omissions in connection with a proxy solicitation. We believe that it is false and misleading for companies to solicit proxies with respect to a shareowner proposal that they do not intend to have presented at the shareowner meeting. For example, we believe that the companies described above knew in advance that they did not intend to allow the presentation of the CalPERS and Chevedden shareowner proposals, however they never provided CalPERS or John Chevedden (or any other shareowners) with any disclosure regarding their intent. Accordingly, we believe that a company should be required to disclose any plans to prevent the presentation of a shareowner proposal, as well as any material meeting procedures (which generally are not publicly available).

CalPERS urges the Division to keep these points in mind as it considers whether to publish additional guidance regarding Rule 14a-8 for the 2011 proxy season. We believe that the abusive practices described above will only proliferate unless the SEC steps in. Not only are these practices unethical, but they also are inconsistent with the law.

We also strongly encourage the SEC to continue to hold informal meetings such as the July 12, 2010, meeting in the future. CalPERS is particularly interested in discussing the multiple methods corporations utilize to resist proposals that are supported by a large majority of the corporation's shareowners. Perhaps such a meeting could include representatives from the Delaware corporate community since some of the issues may implicate state law. Please see attached letter dated October 12, 2009.

Please contact me at (916) 795-9672 if you would like to discuss any of these issues in more detail.

Best Regards,



ANNE SIMPSON
Senior Portfolio Manager

Attachment

cc: Peter H. Mixon, General Counsel
Marte E. Castaños, Senior Staff Counsel