PAUL M. NEUHAUSER
Attorney at Law (Admitted New York and Iowa)

1253 North Basin Lane
Siesta Key
Sarasota, FL 34242

Tel and Fax: (941) 349-6164 Email: pmneuhauser@aol.com

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Securities & Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Att: William J. Kotapish, Esq.
Assistant Director
Division of Investment Management

Via email to shareholderproposals@sec.gov

Re: Shareholder Proposal submitted to the College Retirement Equities Fund

Dear Sir/Madam:

I have been asked by the more than 20 participants (hereinafter referred to as the "Proponents") in the College Retirement Equities Fund (hereinafter referred to as "CREF" or the "Company"), who have jointly submitted a shareholder proposal to CREF, to respond to the letter dated March 22, 2011, sent to the Securities & Exchange Commission by CREF, in which CREF contends that the Proponents' shareholder proposal may be excluded from the Company's year 2011 proxy statement by virtue of Rules 14a-8(i)(11), 14a-8(i)(7), 14a-8(i)(10) and 14a-8(i)(3).

I have reviewed the Proponents' shareholder proposal, as well as the aforesaid letter sent by CREF, and based upon the foregoing, as well as upon a review of Rule 14a-8, it is my opinion that the Proponents' shareholder proposal must be included in CREF's year 2011 proxy statement and that it is not excludable by virtue of any of the cited rules.

The Proponents' shareholder proposal requests CREF to review its investments in companies that operate in the occupied territories of the West Bank and Jerusalem.

RULE 14a-8(i)(11)

We note that CREF states in footnote 1 on page one of its letter to the Commission that it "intends to exclude all of the other proposals" other than that submitted by Mr. Aaron Levitt "on the grounds that they are duplicative" of the proposal submitted by Mr. Levitt. However, CREF acknowledges that all such "participants indicate that Mr. Aaron Levitt will act as the lead filer". Under these circumstances, the various participants are acting as co-proponents with Mr. Levitt and under Rule 14a-8 their co-sponsorship must be acknowledged by CREF.

The purpose of Rule 14a-8(i)(11) is "to eliminate the possibility of shareholders having to consider two or more substantially identical proposals". Release 34-12,598 (July 7, 1976). However, the purpose of that Rule is not to eliminate the co-sponsorship of a single proposal by multiple shareholders or participants.

The Proponents do not intend, and never have intended, that more than one shareholder proposal appear in the Company's proxy statement. On the contrary, as noted by CREF in the cited footnote, they intended to be co-sponsors of the same proposal, and not to be independent sponsors of separate proposals.

It is therefore factually apparent that only one shareholder proposal has been submitted to CREF, which shareholder proposal is co-sponsored by the various participants. Under these circumstances, only one shareholder proposal is to be placed in the proxy statement, but the Company must recognize all co-sponsors of the proposal. In this connection, it should be noted that the Staff has explicitly recognized that proposals can be co-sponsored by more than one shareholder. See Staff Legal Bulletin No. 14C, Section H (June 28, 2005); Staff Legal Bulletin No. 14, Section B.15 (July 13, 2001).

A virtually identical fact situation was considered by the Staff in connection with the denial of a no-action request in *ConocoPhillips* (February 22, 2006). In that letter, the Staff stated:

> We are unable to concur in your view that ConocoPhillips may exclude the proposals under rule 14a-8(i)(11). It appears to us that the School Sisters of Notre Dame, the Church Pension Fund and Bon Secours Health System, Inc., have indicated their intention to co-sponsor the proposal submitted by the Domestic & Foreign Missionary Society of the Episcopal Church.

In other situations factually virtually identical to the instant one, the Staff in has reached the identical result that it reached in the *ConocoPhillips* letter. See *Caterpillar, Inc*. (March 26, 2008); *Tyson Foods, Inc*. (December 15, 2009).

In conclusion, it is factually clear that each of the Proponents has jointly co-sponsored a single shareholder proposal (and not submitted separate proposals) and that such co-sponsorship is contemplated by Rule 14a-8.

For the foregoing reasons, the Company has failed to carry its burden of proving that the exclusion of Rule 14a-8(i)(11) applies to the shareholder proposal submitted by any of the Proponents.

RULE 14a-8(i)(10)

CREF has not substantially implemented the Proponents' shareholder proposal.

The Company's claim to mootness is based in part on footnote 20, on page 6 of its letter. However, all three of the "strategies" delineated there are irrelevant to the Proponents' shareholder proposals, since (1) applies solely to the Company's small Social Choice Account and not to its principal investment vehicles; (2) applies solely to environmental matters; and (3) applies solely to pro-active so-called "alternative investing". None of these three "strategies" relates in any way whatsoever to the Proponents' human rights concerns.

In addition, the Company claims that its so-called "Policy Statement on Corporate Governance" renders the Proponents' proposal moot. Although this Corporate Governance statement makes reference to human rights, there is ABSOLUTLY no claim made by CREF in its letter that it has ever ENGAGED with ANY portfolio company about human rights issues in the Occupied Territories (or indeed on any human rights matter other than on the Sudan, a country with respect to which the United States law prohibits investment). In this

connection, we note that although CREF states that it has voted on a general human rights shareholder proposal at Caterpillar, the Company makes no claim that it has ever undertaken with Caterpillar in the type of activity requested by the shareholder proposal, namely to "engage" with portfolio companies in order to achieve a "goal of ending all practices by which they profit from the Israeli occupation". We also note that Caterpillar is but one of several companies in the CREF portfolio that has some connection to the Occupied Territories, and even if CREF were actually to engage with a single portfolio company, that could never "substantially implement" the proposal when the portfolio contains numerous companies with such a connection.

The Proponents are requesting the Company to take exactly the type of pro-active stance that it took with respect to portfolio investments in companies that were operating in the Sudan. Since CREF has done nothing of the sort, it has failed to establish the applicability of Rule 14a-8(i)(10) the Proponents' shareholder proposal.

RULE 14a-8(i)(7)

The proposal raises a significant policy issue that precludes its exclusion on ordinary business grounds.

We are surprised that CREF has argued that the proposal is excludable because it deals with the ordinary business operations of the Company. In so doing CREF not only fails to apply to the instant proposal the consistent Staff position that human rights proposals raise significant policy issues, but it also fails to note that the Staff has ruled that proposals submitted to portfolio managers with respect to the human rights related activities of their portfolio companies are not excludable under the "ordinary business" rubric for the simple reason that they raise significant policy issues for the portfolio manager. *Fidelity Funds* (January 22, 2008). Finally, CREF has failed to appreciate the fact that the Staff has already opined that shareholder proposals concerning human rights abuses in the Occupied Territories do, indeed, raise a significant policy issue. *American Telephone and Telegraph Company* (January 16, 1991)

The Commission has stated that the "ordinary business" exclusion of Rule 14a-8(i)(7) is inapplicable if the proposal raises an important social policy issue. See Release 34-40018 (May 21, 1998) (proposals that relate to ordinary business matters but that focus on "sufficiently significant policy issues . . . would not be

considered excludable, because the proposals would transcend the day to day business matters . . . ."). We doubt that anyone would seriously contend that a shareholder proposal, such as that submitted by the Proponents, that implicates violations of human rights fails to meet this standard. Thus, the Staff has consistently and uniformly found that human rights proposals raise significant policy issues. See, e.g., *Halliburton Company* (March 9, 2009); *Chevron Corporation* (March 21, 2008); *American International Group, Inc.*, (March 14, 2008); *Nucor Corporation* (March 6, 2008); *Bank of America Corporation* (February 29, 2008); *Abbott Laboratories* (February 28, 2008); *PepsiCo, Inc.* (February 28, 2008); *Citigroup Inc.* (February 21, 2008); *Certain Fidelity Funds* (January 22, 2008); *Yahoo! Inc.* (April 16, 2007); *V.F. Corporation* (February 13, 2004); *E.I. du Pont de Nemours and Company* (February 11, 2004); *BJ Services Company* (December 10, 2003*; The TJX Companies, Inc.* (April 5, 2002); *Wal-Mart Stores, Inc*. (April 3, 2002); *E.I. du Pont de Nemours and Company* (March 11, 2002); *The Stride Rite Corporation* (January 16, 2002); *American Eagle Outfitters, Inc*. (March 20, 2001: *PPG Industries, Inc.* (January 22, 2001),

As noted above, the Staff has applied identical analysis to a human rights proposal submitted to a portfolio manager (similar to CREF) and found that that proposal does, in fact, raise a significant policy issue for the portfolio manager. *Fidelity Funds* (January 22, 2008).

The Staff no-action letters cited by the Company are inapposite. The shareholder proposal in the *CREF* no-action letter of September 7, 2000 (cited in footnote 8 on page 4 of the Company's letter) did not raise a human rights concern. Furthermore, it requested the divestiture of only one named company. On its face, therefore, that shareholder proposal did not raise a general policy issue for the registrant. In contrast, the Proponents' proposal is general in nature, applicable to the entire portfolio, thereby raising a policy issue for the registrant. The fact that the proposal cites three specific companies that may be involved in the Occupied Territories does not in any way detract from the fact that the proposal is not limited to those specific companies, but rather applies to all companies in the portfolio. Furthermore, although the shareholder proposal at issue in 2000 called for the divestment of a specific issuer, the Proponents' proposal merely asks CREF to "consider" divesting if the portfolio companies' conduct remains unchanged. In other words, it requests only engagement with the portfolio companies. As far as the CREF no-action letter of March 25, 2005 is concerned, the proposal at issue there failed to raise a significant policy issue since the underlying actions by the portfolio companies did not implicate any significant policy issue whatsoever. Finally, the *AT&T, Hewlett-Packard* and *Motorola* no-action letters cited in

footnote 14 (page 5) did not involve Rule 14a-8(i)(7), but rather another exclusion under the rule. Consequently, they are irrelevant to the question of whether Rule 14a-8(i)(7) bars the Proponents' shareholder proposal.

In addition, we note that the Company contends that implementation of the Proponents' shareholder proposal would interfere with its policy of choosing "quiet diplomacy". (See first sentence of second full paragraph, page 4 of its letter.) However, such quiet diplomacy is exactly what the proposal is requesting, but there is not one iota of evidence that CREF has actually engaged in any "quiet diplomacy" with respect to the issue at hand. (See Rule 14a-8(i)(10) discussion above.)

Finally, we note that the Company contends that no significant policy issue is involved, apparently because it does not believe that human rights issues are implicated by Israeli activities in the Occupied Territories. (See the carryover sentence on pages 5-6 of its letter.)

In this, the Company stands virtually alone.

For example, the most recent (2011) Report of Human Rights Watch has the following to say about the human right situation in Israeli occupied West Bank:

> **World Report 2011: Israel/Occupied Palestinian Territories**
> Events of 2010
> The human rights ***crisis*** (emphasis supplied) in the Occupied Palestinian Territories (OPT) continued in 2010, despite marginal improvements. . . .
> In the West Bank, including East Jerusalem, Israel imposed severe restrictions on Palestinian freedom of movement, demolished scores of homes under discriminatory practices, continued unlawful settlement construction and arbitrarily detained children and adults. . . .
> Israeli forces in the West Bank killed at least seven Palestinian civilians as of October. According to B'Tselem, those killed, including two young men collecting scrap metal and two children participating in a demonstration inside their village, posed no danger to Israeli military forces or civilians. Israeli settlers destroyed or damages mosques, olive trees, cars, and other Palestinian property, and physically assaulted Palestinians. . . Israeli authorities arrested numerous settlers but convicted few. . . .
> Israel maintained onerous restrictions on the movement of Palestinians in the West Bank. . . It removed some closure obstacles, but more than 500 remained. . . .

> Israeli military justice authorities detained Palestinians who advocated non-violent protest against Israeli settlements and the route of the separation barrier. . . .
> As of September, Israel held 189 Palestinians in administrative detention without charge.

On January 11, 2011, Human Rights Watch issued a press release entitled "Israel/West Bank: Jail for Peaceful Protesters" in which it stated that the conviction of a Palestinian had raised "grave due process concerns". It further stated that "the conviction was based on allegations that did not specify any particular incidents of wrongdoing and on statements by children who retracted them in court" and who had been interrogated in Hebrew, a language they did not understand. (See www.hrw.org/en/news/2011/01/12/israelwest-bank)

In addition, Human Rights Watch published last December a report on businesses that profit from doing business with West Bank settlements, and made several recommendation, including implementing "strategies to prevent and mitigate any corporate involvement in such [human rights] abuses" and "where business activity directly contributes to serious violations of international law . . . take action to end such involvement in legal violations, including where necessary ending such operations altogether". See *Separate and Unequal*, subpart II, "Recommendations to Businesses Profiting from Settlements". (December 19, 2010) www.hrw.org/en/reports/2010/12/19

Similarly, Freedom House (2010 edition), which rates the status of all of the nations of the world, ranks the Occupied Territories as follows (where 1 is the highest and 7 the lowest):

> Political Rights Score: 6
> Civil Liberties Score: 6
> Status: Not Free

Other nations equally ranked as "6" include such human rights abusers as Afghanistan, Iran, Tunisia, Vietnam and Zimbabwe, and are ranked just barely above nations such as China, Cuba, Saudi Arabia and Syria.(See www.freedomhouse.org.)

The U.S. Department of State publishes annually a Report on Human Rights Practices in every nation around the globe. Its 2010 Country Report for the Occupied Territories included the following in its introduction:

> Principal human rights problems related to Israeli authorities in the West Bank were reports of excessive use of force against civilians, including killings, torture of Palestinian detainees, improper use of security detention procedures, austere and overcrowded detention facilities, demolition and confiscation of Palestinian properties, limits on freedom of speech and assembly, and severe restrictions on Palestinians' internal and external freedom of movement.

Consequently, it is scarcely surprising that the Staff has long held that shareholder proposals concerning human rights abuses in the Occupied Territories raise important policy issues. *American Telephone and Telegraph Company* (January 16, 1991).

In addition, it should be noted that divestiture of companies involved in business in the West Bank have taken place at a number of European financial institutions, including the Norwegian governmental pension plan, the largest Swedish pension plan, Danske Bank, Folksam (Sweden's largest asset manager), PKA Ltd (large Danish pension plan) and Dexia (Belgian-Franch).

Finally, we believe that the only attempt by the Company to establish that the Proponents' proposal fails to raise a policy issue actually proves the reverse, namely that it does raise an important policy issue. In the carryover sentence on pages 5-6 the Company cites a vote in the United Nations Security Council in support of its position. In that vote fourteen members of the Security Council voted for the condemnation of Israel and one, the United States, voted against it. The United States vote constituted a veto of a resolution otherwise unanimously agreed to by all of the other members of the Security Council. Whether the United States was right or wrong to veto the condemnation is not the issue. The issue is whether the shareholder proposal raises an important policy issue, not whether the views of the Proponents, or of the United States, are correct. Such an all but unanimous vote by the responsible nations of the world provides irrefutable proof that the Proponents' shareholder proposal implicates an important policy issue.

For the foregoing reasons, CREF has failed to establish the applicability of Rule 14a-8(i)(7) to the Proponents' shareholder proposal.

RULE 14a-8(i)(3)

The primary reason that the Staff issued Staff Legal Bulletin 14B (September 15, 2004) was to end the practice of registrants raising insubstantial objections to

the wording of shareholder proposals, and, in particular, raising objections that proponent's statements really constituted opinions (although not labeled as such) or were statements of fact that were disputable. Thus, the Bulletin stated (section B.1.4.):

> Accordingly, we are clarifying our views with regard to the application of rule 14a-8(i)(3). . . . going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(i)(3) in the following circumstances
>
> - . . .
> - the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
> - . . . .
> - the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

It is clear that the company's objections are precisely of the type that the Staff Legal Bulletin was intended to obviate. Thus the Company (final paragraph, page 8) complains that some statements are "highly controversial and subject to widely differing views as to their accuracy and implications" and are contrary to policy positions taken by the United States government. Even if true, the Staff Legal Bulletin clearly establishes that such alleged deficiencies are not sufficient grounds for the invocation of Rule 14a-8(i)(3). Similarly, CREF claims that the Proponents have misconstrued the CREF Social Responsible Investing Report (the "Report"). Once again, the Staff Legal Bulletin would appear to preclude any 14a-8(i)(3) objection. In any event, the characterization by the Proponents of the Company's Report would appear to be accurate, since that Report states (page 8) that "We believe that companies should respect human rights by . . . avoiding complicity in human rights abuses committed by others".

Furthermore, the position taken by the Proponents is "not contrary to positions taken by the United States government" as alleged in the final paragraph on page 8 of the Company's letter and footnote 32 to the aforesaid quote. As stated in the very Reuters article cited by CREF, Ambassador Rice stated to the Security Council that the "US view is that the Israeli settlements lack legitimacy". That same article relied upon by the Company also stated that the position of Brittan, France and Germany is that the settlements "are illegal under international law".

In summary, the Company has failed to establish that any statement by the Proponents violates Rule 14a-8(i)(3).

Two final points. First, even if the Company's arguments were to be accepted, the only result would be that some phrases or sentences would have to be excised, but the entire proposal would not be excludable. Second, if the Staff were to disagree with our position, the Proponents' would be willing to amend the proposal to eliminate any portion deemed to be false or misleading.

In conclusion, we request the Staff to inform the Company that the SEC proxy rules require denial of the Company's no action request.

Subject to the supplemental information provided in the next paragraph, we would appreciate your telephoning the undersigned at 941-349-6164 with respect to any questions in connection with this matter or if the Staff wishes any further information. Faxes can be received at the same number. Please also note that the undersigned may be reached by mail or express delivery at the letterhead address (or via the email address).

Please note, however, that the undersigned will be out of the country April 27- May 16, but will have sporadic access to email. During that period please send any communication by email and copy any such communication to Ms. Barbara Harvey, Esq., whose email is blmharvey@sbcglobal.net; tel and fax 313-567-4228.

Very truly yours,

Paul M. Neuhauser
Attorney at Law

cc: William J. Mostyn, III
Sidney Levy
Barbara Harvey