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December 5, 2003

Jonathan G. Katz
Secretary,
U.S. Securities and Exchange Commission
450 Fifth Street, NW,
Washington, DC 20549-0609

Re: File No. S7-19-03
Security Holder Director Nominations

Dear Mr. Katz,

I am writing to you on behalf of the California Public Employees' Retirement System (CalPERS). CalPERS is the largest public pension system in the U.S., with approximately **$1**52 billion in assets. We manage retirement benefits and health insurance on behalf of nearly 1.3 million members.

CalPERS is pleased to provide comment on the Commission's proposed rule on security holder nominations. We feel that the so called open access to the proxy rule is perhaps the most significant reform to come as a result of the financial market crisis in the U.S. We recognize the leadership of the Commission as well as the staff in the development and support for this important reform and for that we are grateful. Accordingly, we are offering our strong support for the proposed rule and we have a few suggestions for improvements.

In direct response to concerns that have been raised over potential abuse of the proposed rule, we would like to assure the Commission that we intend to utilize the rule in a responsible manner. **As** you can see, from our response, we have carefully considered the impact of the proposed rule not only on our role as a shareowner, but also on the corporate management of the companies in which we invest. We do not wish the rule to be overused and have accordingly supported a number of thresholds and limiting criteria for its application.

We take our fiduciary duty seriously. **As** you are aware, as trustees, we are held to a fiduciary duty to act in the sole interests of our beneficiaries. Accordingly, it is our intent to utilize open access as one component of our existing Governance Program. Our expectation is that CalPERS will typically only utilize open access rules after other steps in our engagement program fail to produce results. We recognize that nominating directors is a significant step for owners; therefore, we intend to continue to seek reform at underperforming companies through less aggressive means before utilizing open access.

We have a number of detailed responses to the numerous questions raised by the SEC in the proposed rule. Due to the length of the response we have organized our comments into a matrix as an attachment to this letter.

However, there are several key issues that we feel are of significant importance in this proposal, and we would like to highlight these for the attention of the Commission. While we feel that all of the questions and responses provided in the matrix are important, these are the most critical issues in helping make this rule successful and effective for **s**hareowners.

Our perspective is one of a major institutional investor, but also as a leader in corporate governance. Our Governance Program has significant assets dedicated to active management strategies both externally managed as well as internally. We have significant experience in analyzing governance structures and in engaging companies in which we invest. This experience hopefully provides you with a valuable perspective on the proposed rule from a practitioner who will utilize the rule in the management of assets.

As mentioned earlier, we strongly support the proposed rule. The Commission has correctly focused on situations where there is evidence that a company has been unresponsive to shareowner concerns as they relate to the proxy process. While we agree with this approach, we also feel that a slightly broader interpretation of how to achieve this end is appropriate. For example, as shareowners we are conceptually not in agreement that the use of triggers is appropriate. However, if the Commission believes that triggers are necessary, we advocate for additional triggers that we feel are consistent with the overall goals of the Commission yet will help make the rule more effective for our use as an investor.

There are four specific areas in which we provided comment that we feel are of significant importance. With these amendments as well as the comments provided in the attached matrix, we feel the rule can be enhanced quite meaningfully without any concern over increasing the likelihood that the procedures would be abused or excessively burdensome for the companies we own. The four areas are as follows:

1) Triggers

CalPERS believes strongly that the rule should include a trigger based on non-implementation of a shareholder proposal that passes by majority vote. We believe there is no more direct link than the one between the non-implementation of a shareowner proposal and the Commission's rationale for the proposed rule – providing a mechanism for long-term shareowners to influence companies where there are indications that the proxy process has been ineffective or when there is dissatisfaction with the proxy process. If a shareowner proposal passes but is not implemented – often times year after year – obviously the proxy process is ineffective.

We also support additional triggers that do not require a shareholder sponsored event that prolongs the submission of director nominations for an additional year. Specific events such as SEC enforcement actions, indictment on criminal charges of any executive officer or director of a company directly related to his or her duties as an officer or director, material restatements, delisting by a market, and significant share underperformance relative to an applicable peer group for an extended period are critical events evoking shareholder concerns. Each of these criteria is consistent with cases where shareowners have reason to be dissatisfied with the existing board or management. While shareowners will certainly not choose to take action under the nominating procedure in many of the cases that these triggers would permit, this is the proper universe to which this rule should apply.

In regards to the two triggers in the proposed rule, we are supportive of these mechanisms, and we feel that they are appropriate triggers. However, we believe that the withhold threshold in the first trigger should be lowered from the proposed 35% to 20%. This still represents a significant hurdle for a withhold campaign, and certainly demonstrates dissatisfaction of the owners. On the other hand, it is also a high enough hurdle that there will not likely be a large number of companies that will have the nominating procedure triggered due to this event. We also seek to remove the proposed criteria that any shareowner proposal to implement the access procedure would need to be sponsored by a 1% holder or group. We feel that it is irrelevant who sponsors the proposal. Rather, the important issue to focus on is that the proposal will need to be passed by a majority vote. We feel that the 1% requirement is unnecessary.

2) Number of Nominees

CalPERS is advocating that the number of permitted nominees should never be less than 2. We suggest that the rule permit 2 nominees or up to 35% of the seats on the board, whichever is larger. In our experience, it is very difficult for a single director to effect change or have an effective voice. Limiting the number of nominees to 1 in any circumstance would impair the proposed rule form achieving its stated goal of providing a mechanism for dissatisfied owners to seek greater representation. While we agree that this rule should not permit security holders to seek control, we view the proposed limitations on the number of nominees as too constrictive. Clearly, any number of seats that remain less than a majority will avoid such concerns. Again, given the fact that any

nominees would still be required to obtain a majority vote to be elected, owners will have the ultimate control and would not elect a slate if they thought it was too large relative to the particular board.

3) Time Period for Application of the Rule

CalPERS is advocating that the rule, once triggered, should remain operative for a period of five years. The proposed time period it would remain in effect of two years is simply too short to permit owners the ability to monitor performance and responsiveness and react accordingly. In one sense, the shorter time period might force investors to nominate candidates in situations when they might otherwise be willing to give incumbent boards some time to address concerns without nominating new or additional directors.

4) Nominee Independence Standards

CalPERS is supportive of the concept of requiring that nominees under this rule be independent of the company. We are also generally supportive of independence standards that would be applied to the relationship between the nominee and the nominating holder or group. However, we have serious concerns that the broad application of the proposed independence standards will inhibit significant holders from seeking seats on boards as part of actively managed governance strategies. For example, CalPERS has significant resources dedicated to actively managed strategies in the governance arena. Under these strategies, external managers such as Relational Investors may seek board representation in an effort to build long-term equity value in a company. **As** such, these individuals conduct rigorous fundamental research and take significant equity positions. These individuals are perhaps the most desired type of director because they are independent, extremely well aligned with the owners, and very well prepared with an in-depth understanding of the company that other directors typically do not posses.

CalPERS is advocating for a narrow exception to the proposed independence standards that would permit holders of at least 2% to nominate principles of the fund. We believe that this threshold would ensure that the nominating holder is a very significant investor. We also have ultimate confidence in the election process and once again point out that the nominee still must be elected by a majority. We are fully supportive of disclosure requirements that would require the nominee to disclose their holdings, qualifications and affiliation with the nominating holder. With this information, it is appropriate to let the owners decide if a significant equity owner should be elected to the board to represent shareowners.

Thank you for the opportunity to comment. Please feel free to contact Ted White, Director, Corporate Governance, at (916) 341-2731 with any questions.

Sincerely,

Sean Harrigan, President
Board of Administration

cc:
CalPERS Board of Administration
Mark Anson, Chief Investment Officer
Ted White, Director, Corporate Governance

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SEC Proposed Rule:
Security Holder Director Nominations (Open Access)
Comments Due - December 22,2003

(12/5/03)

SEC – General Questions	CalPERS Responses
A.1. Should the Commission adopt rules requiring companies to place security holder nominees in the proxy materials? Currently, are the means adequate to holders to address a company's perceived unresponsiveness?	CalPERS is strongly supportive of the SEC's proposed rules related to access to the proxy. Means currently available to shareowners, while important, are not adequate to address shareowner concerns related to responsiveness, poor performance and accountability. Perhaps most significant among these issues is accountability. CalPERS believes that a lack of accountability is at the heart of significant concerns with corporate boards in the U.S. The proposed rules on open access certainly provide some ability for shareowners to improve the responsiveness and accountability of corporate boards to owners, however we also feel that several improvements to the proposed rule could greatly enhance this ability without negatively impacting areas of the proposal where the Commission has obvious concerns over how the rule may impact companies.
A.2. What are the costs associated with adoption of the rules?	CalPERS believes the costs to companies related to this rule will be incremental in nature, and not significant as a direct result of the rule. This position is based on the fact that the rule will simply permit shareowners the ability to access existing proxy material, and will not force companies to produce separate proxy statements. From a shareowners' perspective, the proposed rule will provide obvious economies in that it would eliminate the need for costly duplication of proxy mailings. CalPERS realizes that some companies may spend significant resources in response to a shareowner nominee. It is not appropriate to consider this potential expense as a negative consequence of the proposed rule. Due to the limited application of the proposed rule, CalPERS believes that the overall impact on the U.S. financial markets from a cost perspective will be insignificant. Further, we believe that the potential positive impact from providing additional accountability to long-term shareowner concerns will far outweiah the costs.

A.3. What direct or indirect effect would this have on companies' corporate governance policies relating to the election of directors? Will companies be more or less likely to adopt cumulative voting policies and/or elect directors annually?	CalPERS feels that one of the most significant benefits from the proposed rule will be increased accountability of boards to the interests of owners. From a broad perspective, this means that companies will be more likely to adopt best practice governance structures that are commonly accepted. It is likely that companies will be responsive to several core governance issues that tend to receive significant support from a broad range of owners, such as annual elections. More specifically, we believe that the proposed rule will have a dramatic impact on the quality of corporate nominating and perhaps most important re-nominating processes. However, this proposed rule does have the potential for unintended consequences if not carefully implemented. For example, see the comments in response to question C.6.
B.1. As proposed, the Exchange Act Rule 14a-11 would apply to all companies subject to the proxy rules. Would this broad application have a disproportionate impact on smaller operating companies? Are there modifications to accommodate small entities? Would it be more appropriate to apply the procedure to only "accelerated filers" (See Exchange Act 12b-2) and funds? As an initial step? Would other limitations be more appropriate, such as applying to all companies other than small business issuers, or all companies other than those that have been subject to the proxy rules for less than a specified period of time?	CalPERS views the thresholds that are proposed as adequate (with comments applied). No further methods for narrowing the universe of companies where open access would potentially be applied seems appropriate. If the proposal is applied to accelerated filers only, CalPERS would support a re-evaluation of this at some future date.

B.2. Should companies be able to take specified steps or actions that would prevent application of the proposed procedure where such procedure would otherwise apply? If so what steps would be appropriate? Should companies subject to Exchange Act Rule 14a-11 be permitted to exclude certain proposals that they would otherwise be required to include? If so, what categories of proposals?	No, companies should not be permitted to take actions to prevent application of the proposed nomination procedure when it would otherwise apply. Companies should not be exempted from the proposed nomination procedure simply by agreeing to not exclude other shareowner proposals from the proxy. CalPERS supports additional triggers in the rule (see below), and therefore would not support exempting companies from application of the nominating procedure if they implement all shareowner proposals passed by majority vote in any given year. If a company triggers any one of the remaining elements of the rule, it is appropriate for the owners to have the ability to nominate directors using the procedures in the rule.
9.3. Would adoption of this procedure conflict with any state law, federal law, or rule of a national securities exchange or national securities association? If so, specify what Provisions would be violated?	CalPERS is not aware of any significant conflict though we are concerned that state laws may in the future be amended to limit the application of the proposed rule.
B.4. Is it appropriate to limit the availability of the proposed procedure to those situations where state law permits holders to nominate candidates for director? Is it appropriate to permit companies to limit the availability of the proposed procedure by limiting the right to nominate directors when allowed by state law? Regardless of the existence of a state law, should companies be subject to the proposed Procedure?	CalPERS is concerned over the applicability of state law in regards to the proposed rule. It is appropriate for the SEC to be sensitive to situations where the proposed rule is in direct conflict with state law. However, it is not appropriate to require permissive state law for the application of the proposed procedure.
B.5. Most companies currently use plurality voting in the election of directors. What specific issues would arise in an election where state law or the company's governing instruments provided for other than plurality voting (e.g., majority voting)? Would these issues need to be addressed? If so, how?	It appears that plurality voting would be the most reasonable means of electing directors under the proposed rules, especially since companies tend to use plurality voting anyway.

C.1. As proposed, the new procedure would require a triggering event for holders. Is this appropriate? If so, are the proposed events appropriate? Are there other events that should trigger the procedure? Should the election of a holder nominee as a member of a company's board of directors be deemed a triggering event in itself that would extend the process by another year or longer period of time?	CalPERS is generally supportive of the Commission's goal of providing a mechanism for long-term owners to influence companies where there are indications that the proxy process has been ineffective or shareowners are dissatisfied with that process. The triggers in the proposed rule do identify companies were the proxy process is broken. However, there is no better evidence of a corporate governance breakdown than a company ignoring a shareholder proposal voted for by more than 50% of the "votes cast". CalPERS, as a matter of policy, votes against all directors of a company that has failed to take such action. While we understand there are implementation issues, these issues are not insurmountable. Moreover, to allow this trigger to be excluded from the final rule will severely weaken this proposal. As a major institutional investor and a long time governance advocate, we are also supportive of provisions in the rule that could address poor performance as well as generally poor governance as evidenced by a broken proxy process. We feel that there are significant benefits to this slightly broader interpretation of the goals of the rule. Therefore, CalPERS suggests the following additional triggers: 1) CalPERS supports a trigger based upon non-response to a shareowner proposal that passes by majority of "votes cast" (see above and question C.II); 2) Material restatements. Rather than approach this trigger by requiring multiple restatements we feel that it is more appropriate to identify a level of significance in the restatement that would correspond with a "significant level of concern" by owners. While any restatement may qualify as a significant concern for the owners, this must be balanced with a desire to permit more routine restatements without the impact of triggering the procedure. CalPERS suggests that the threshold be established at any restatement that affects greater than 1/3 of income for the applicable accounting period; 3) SEC enforcement actions including a negotiated settlement in which the company agrees to any substantial monetary payments; **4)** Significant underperformance relative to an applicable peer group for an extended period, such as three years. CalPERS suggests two alternative means of implementing this trigger: a) any company with a total stock return (TSR) of less than a set amount of the pertinent peer index for any consecutive three year period; and b) any company with a TSR of less than

	25% of the pertinent peer index per year for any consecutive three year period. (CalPERS estimates that approximately 12% of companies would be subject to open access rules under this suggestion using the 25% number above. 5) CalPERS would also support triggers based upon indictment on criminal charges of any executive officer or director of the company directly relating to his or her duties as an officer or director. 6) Delisting by a market. **As** long as the rule is adopted to include a more significant time period for its application (see C.2 below), it does not appear necessary to deem the election of a shareowner nominee (under the proposed rule) a triggering event in itself thus extending the process by another year or more. However, if the time period is not extended, the election of a holder nominee as a member of a company's board of directors should be deemed a triggering event that would extend the process by another year or longer period of time.
C.2. How long after a triggering event should holders be able to use the nomination procedure, if not two years, as is proposed (e.g., one year, three years, or longer)? Should there be other ways for the procedure to terminate? If so, what actions would be appropriate?	CalPERS supports a more significant time period for the rule to be in effect following a trigger event. A period of at least five years or longer would be appropriate to permit shareowners the time to truly evaluate the performance of a company and the board members. If a period of at least five years is provided for the application of the rule following a trigger, it would be acceptable to permit companies to submit a proposal during that period to eliminate the procedure. If a period of less than five years is adopted, no procedures for a company to remove the application of the rule are appropriate.

C.3. As proposed, the nomination procedure could be triggered by withhold votes for one or more directors of more than 35% of the votes cast. Is 35% the correct percentage? If not, why? Is it appropriate to base this trigger on votes cast vs. votes outstanding? Is the percentage of withhold votes the appropriate standard in all cases? What is appropriate for companies that do not use plurality voting?	CalPERS is strongly supportive of the concept that significant withhold votes represent a sign of investor dissatisfaction with the proxy process and should be one of the trigger events for access to the proxy. However, a threshold of 35% is too high to provide a meaningful trigger. CalPERS believes that a threshold of 20% would be more appropriate and would maintain the balance between demonstrating significant shareowner dissatisfaction on one hand and yet still ensuring that the process would provide a reasonable opportunity for shareowners to trigger the nominating procedure. It is appropriate to use the percentage of votes cast vs. votes outstanding. If the Commission adopts another standard other than votes cast, the rule will encourage issuers to adopt higher voting standards to the detriment of all shareowners. This unintended result must be avoided. In regards to the threshold for triggering the procedure, there does not appear to be any reason to differentiate if a company uses plurality voting or majority voting.
C.4. Should the nomination procedure triggering event related to direct access security holder proposals trigger the procedure only where a more than 1% holder or group submits the proposal? Should standards otherwise applicable for inclusion under Exchange Act Rule 14a-8 apply? Should the requiring holding period for the securities used to calculate the holder's ownership be longer than one year? If so, what is the appropriate holding period?	No, there should be no limitations placed upon the application of the proposal for the nomination procedure other than standard thresholds that apply to all shareowner proposals. It is more appropriate to recognize that the proposal must pass by a majority vote to be implemented. In this case it is irrelevant who sponsored the proposal as long as the typical shareowner proposal requirements are met. The thresholds under Exchange Act Rule 14a-8 are appropriate since a company's response to this type of shareowner will pose no greater burden to a Company than a proposal brought under Exchange Act Rule 14a-8. If the Commission insists on a threshold different from Exchange Act Rule 14a-8, CalPERS respectfully requests a threshold of .25% of a company if the .25% consists of a passive long-term strategy. CalPERS finds it difficult to understand why an investor with 1% of a company who may sell the stock in as little as one year could bring a proposal but a shareholder of CalPERS size could not, even though we do not plan on selling the stock at all. To require CalPERS to get the cooperation of fellow shareholders may be possible, but will jeopardize the confidential nature of our communications with many companies that we focus on in our Corporate Governance Program. A one year holding period is appropriate.

C.5. Are the existing methods under Exchange Act Rule 14a-8 sufficient to demonstrate that a proposal was submitted by a more than 1% holder? If not, what other methods would be appropriate?	In the event the Commission adopts the 1% hurdle, which CalPERS believes is inappropriate, the methods demonstrate ownership should not be more stringent than under Exchange Act Rule 14a-8. In fact, this rule and Exchange Act Rule 14a-8 should be written to allow a custodian bank to confirm ownership. The Commission should be aware that issuers often use the "record" owner test to the confusion and ultimate frustration of shareowner proposal proponents by claiming that Cede & Co. is the only "record" owner they know.
C.6. As proposed, a direct access holder proposal could result in a nomination procedure triggering event if it receives more than 50% of the votes cast with regard to that proposal. Is this the proper standard? Should the standard be higher? Should the standard be based on votes cast for the proposal as a percentage of the outstanding securities that are eligible to vote on the proposal?	Yes, this is the proper standard. It should not be higher. It is appropriate to use the percentage of votes cast on the particular proposal to demonstrate a majority vote. CalPERS does not support any other methodology of calculating a majority vote. If the Commission adopts a standard based on "votes outstanding" vs. "votes cast" the rule will no doubt cause issuers to adopt higher voting standards to the detriment of all shareowners. This unintended result must be avoided.
C.7. Should direct access holder proposals be subject to a higher resubmission standard than other Exchange Act Rule 14a-8 proposals? If so, what standard would be appropriate?	No.
C.8. We have proposed that nomination procedure triggering events could occur after January 1, 2004. Is this the proper date? Should it be an earlier date? Should it be a later date?	CalPERS suggests that any triggering event in the preceding three year period be applicable to the extent that such a position is allowed by law, and that any resulting nominating procedure be effective no later than January 1, 2004 (or such period that would permit the proper notifications and disclosures under the rule). Companies that have satisfied the trigger events in previous years are no less in need of greater shareowner involvement as companies that have a trigger event occur after 2004.

C.9. What are the possible consequences of the use of nomination procedure triggering events? Will there be more expense and effort related to these votes on proposals? Will there be more campaigns seeking "withhold" votes? How will any such consequences affect the operation and governance of companies?	CalPERS does not feel that adoption of the nominating procedures will result in a significant difference in regards to resources dedicated to shareowner proposals. It is likely that directors will face an increased level of scrutiny and more frequent withhold campaigns, which CalPERS considers an ancillary benefit of the proposed rule. CalPERS believes it is healthy to bring more attention to the director election process by raising the stakes on director elections. (CalPERS maintains that a 20% threshold is appropriate for the withhold trigger as this level will still require significant dissatisfaction on behalf of shareowners to reach). CalPERS believes that the proposed rules will have a significant benefit in relation to the governance of public companies. Not only will companies be much more inclined to adopt rigorous nominating and re-nominating standards, they will also be highly inclined to adopt majority vote shareowner proposals and generally be more accountable to owners.
C.10. Should companies be exempted from the procedure when another party commences or evidences its intent to commence a solicitation in opposition subject to Exchange Act Rule 14a-12(c) prior to the company mailing its proxy materials?	No. It seems appropriate that votes withheld from the company nominee(s) in this event still accurately represent shareowner dissatisfaction.
C.11. We have discussed our consideration of and requested public comment on the appropriateness of a triggering event premised upon the company's non-implementation of a holder proposal that receives more than 50% of the votes cast on that proposal. Should such a triggering event be included in the nomination procedure?	Yes, CalPERS strongly supports a trigger based on non-implementation of a proposal that passes by majority vote. We believe there is no more direct link than the one between the non-implementation of a shareowner proposal and the Commission's rationale for the proposed rule – providing a mechanism for long-term shareowners to influence companies where there are indications that the proxy process has been ineffective or where there is dissatisfaction with the proxy process. If a shareowner's proposal passes but is not implemented – often times year after year – obviously the proxy process is ineffective.
C.11.a. Should a proposal receiving more than 50% of votes cast operate as a triggering event regardless of the topic of the proposal, or would it be appropriate to instead require that the proposal relate to a specified category of topics (e.g., corporate governance matters)? If so, how should that specific category of topics (e.g., corporate governance matters) be defined?	Any shareowner proposal that passes by greater than 50% but is not implemented should qualify as a triggering event. The topic of the proposal is not relevant in this regard because the focus of this trigger is on the ineffectiveness of the proxy process. The fact that the proposal must pass by greater than 50% is a more than adequate guarantee that the topic of the proposal is sufficiently important to the owners to merit implementation by the company.

C.II.b. Should a proposal result in a triggering event if it receives more than 50% of the votes cast with regard to that proposal? Should the standard be higher (*e.g.*, 55%, 60%, 65%)? Should the standard be based on votes cast for the proposal as a percentage of the outstanding securities that are eligible to vote on the proposal (*e.g.*, 50% of the outstanding securities)? Would the described means of determining whether a proposal has been implemented be sufficient? Should there be a different means for determining implementation? Are there other or additional criteria that would be appropriate? Should the determination be made by the entire board of directors? Should the determination be made by the independent members of the board of directors? Should the board be given broader flexibility (*e.g.*, should it be able to represent its intention to implement a proposal)? Should the Commission or its staff (for example, the Division of Corporation Finance) play a role in this process (*e.g.*, similar to that for holder proposals under Exchange Act Rule 14a-8)? Alternatively, what role should the courts play? What is the best record for a judicial determination?	The only appropriate measure is 50% of votes cast. It is not appropriate to require a majority of shares outstanding as this would presume that shares not voted are opposed to the proposal. In regards to determining implementation, it is acceptable to require that board represent in Exchange Act Form 8-K whether it has implemented a proposal that has passed by greater than 50% of votes cast. However, it is imperative that some form of appeal be provided in cases where owners are not satisfied with the representation by the board that it has satisfactorily implemented the proposal. The SEC seems to be the most appropriate means for arbitrating a dispute over implementation of shareowner proposals. We feel that the number of events where boards will improperly represent their response to majority vote proposals will be limited; however, some additional incentive may serve to keep the number of cases to a minimum. CalPERS suggests that in cases where a company represents that it has satisfactorily implemented a proposal and a shareowner seeks correction through the SEC and is successful, the shareowner nomination procedure would apply to that company for twice the normal period. It is appropriate to require that the independent members of the board provide the determination that the proposal has been implemented. The certification should provide adequate disclosure to determine how the board members came to their conclusion. It may **be** easier to provide for a set period of time from the annual meeting where the proposal was passed for the board to act upon the proposal. This period should be sufficient to provide adequate time for the board to act (or provide its commitment to act), but should also provide enough time for security owners to prepare for the nominating procedure at the following meeting should it be triggered. CalPERS suggests a period of 6 months from the meeting date for the board to act upon the proposal. In cases where the proposal would take additional time to implement, such as a proposal asking the board to seek shareowner approval at the next annual meeting to declassify, the board should be permitted to simply commit within the six month time period to taking the necessary action to satisfy the proposal in the appropriate time frame.

C.II.c. Should holders that do not agree with a company's conclusion that a proposal had been implemented have the right to contest that conclusion through a judicial proceeding? Should they have a private right of action to do so? Is there any reason to believe that holders would not have a private right of action to contest a company's determination that a proposal has been implemented? If so, what recourse, if any, should a holder have with regard to a company's determination?	Yes, shareowners should have the ability to challenge the company's actions or lack thereof in court where the SEC has heard and decided against a shareowner. To the extent current law is ambiguous on this point, the proposed rule should address the issue.
C.II.d. Should a company be required to file an Exchange Act Form 8-K stating whether or not it implemented a proposal that is eligible to trigger the rule? Is it appropriate to require that companies make such a statement on Exchange Act Form 8-K? Would this impose unnecessary liability on companies that make a determination regarding implementation of a proposal with which holders may disagree?	Some form of official filing from the company indicating that it either has or has not implemented the proposal will be needed. CalPERS believes that Form 8-K is acceptable. CalPERS thinks that it is necessary for shareowners to have a means to dispute the certification to the SEC. It is also appropriate to have some form of penalty in cases where a security owner disputes the company's representation and is found to be correct. CalPERS suggests that in these cases the nominating procedures be applied to the specific company for twice the normal period.
D.1. Will the proposed disclosure requirements in Exchange Act Forms IO-Q, IO-QSB, IO-K and IO-KSB provide adequate notice to holders? Should additional notices be required? If so, what form should that notice take and at what time should it be made public?	The proposed disclosures are adequate.
D.2. Should the company's notice be filed and/or made public in some other manner? If so, what manner would be appropriate?	Additional disclosure could be provided through the company's website.

E.1. Are the proposed thresholds for use of the proposed procedure appropriate? If not, should there be any restrictions regarding which holder nominees for director would be required to be disclosed in the company proxy materials under the proposed procedure? If so, should those restrictions be consistent with the ownership requirements of Exchange Act Rule 14a-8? Should those restrictions be more extensive than the minimum requirements in Exchange Act Rule 14a-8?	CalPERS supports the proposed eligibility standards. CalPERS believes that having the consensus and cooperation of a large group of long-term owners involved in the selection of a nominee is appropriate.
E.2. Is it appropriate to include a restriction on holder eligibility that is based on percentage of securities owned? If so, is the more than 5% standard that we have proposed appropriate? Should the standard be lower (*e.g.*, 2%, 3%, or 4%) or higher (*e.g.* 6%, 7%, 8%, 9%, 10%, 15%, 20%, or 25%)?	CalPERS supports an eligibility restriction based on a 3% of securities owned standard.
E.3. Should there be a restriction on holder eligibility that is based on the length of time securities have been held? If so, is two years the proper standard? Should the standard be shorter (*e.g.*, 1 year) or longer (*e.g.*, 3 years, **4** years, or 5 years)? Should the standard be measured by a different date (*e.g.*, 2 years as of the date of the meeting, rather than the date of nomination)?	CalPERS supports the eligibility restriction based on holding period, but believes that it could be shortened to no less than 1 year.
E.4. As proposed, a nominating holder would be required to represent its intent to hold the securities until the date of the election of directors. Is it appropriate to include such a requirement? Would it be appropriate to require the holder to intend to hold the securities beyond the election of directors (*e.g.*, for six months after the election, one year after the election, or two years after the election) and to so represent?	It is appropriate to require that the nominating owner state its intent to hold the securities until the election of directors, however it is not appropriate to require a representation as to intent to hold after the election.

E.5. Is the eligibility requirement that a holder or group must file an Exchange Act Schedule 13G appropriate? Should there be a different mechanism for putting companies and other holders on notice that a holder or security holder group (group) has ownership of more than 5% of the company's securities and intends to nominate a holder? Is it appropriate to permit the filing to be on Exchange Act Schedule 13G rather than Exchange Act Schedule 13D? If not, why not?	CalPERS is not opposed to the requirement to file a 13G, and feels that this mechanism is appropriate for these nominating procedures.
E.6. Should the procedure include a provision that would deny eligibility for any nominating holder or group that has had a nominee included in the company materials where that nominee did not receive a sufficient number of votes (*e.g.*, 5%, 15%, 25%, or 35%) within a specified period of time in the past? If there should be such an eligibility standard, how long should the prohibition last?	No such limitation seems necessary. If the rule does include such a limitation it should be consistent with re-submission standards pertaining to shareowner proposals to the greatest degree possible.
E.7. Should holders be allowed to aggregate their holdings in order to meet the ownership eligibility requirement to nominate directors? If so, is it appropriate to require that all members of a nominating group individually meet the minimum holding period? **Is** it appropriate to require that all members of the group be eligible to file on Exchange Act Schedule 13G?	Yes, owners should be permitted to aggregate their holdings to meet ownership eligibility requirements. Without such a provision the proposed rule would be substantially impaired. It is reasonable to assume that the proposed 5% ownership threshold will provide adequate assurance that the ownership interests are very serious about the situation at the company. It is appropriate to require all members of a nominating group to individually meet the minimum holding period. It is also appropriate that all the members be eligible to file on Exchange Act Schedule 13G.

E.8. As proposed, the beneficial ownership level of a nominating holder or group would be established by the Exchange Act Schedule 13G filed by that holder or group, for companies other than open-end management investment companies ("mutual funds"). Is the filing of the Exchange Act Schedule 13G sufficient evidence of ownership? If not, what additional evidence would be appropriate? Should there be an additional procedure by which disputes regarding ownership levels are resolved?	CalPERS feels that the 13G filings, and the accompanying certifications of ownership should the Commission take CalPERS' suggestions above, would provide adequate proof of ownership. Procedures for settling a dispute over ownership should be created by the SEC. The procedures should provide for adequate means of cure, and should specify that as long as the group identified maintains the required thresholds, it will not be a violation of the rule resulting in the disqualification of the group or shareowner nominated candidate(s) if one or more members is found to have less shares than originally represented or a holding period that is different than originally represented.
F.1. Should there be any other or additional limitations regarding nominee eligibility? Would any such limitations undercut the stated purposes of the proposed process? Are any such limitations necessary? If so, why?	No, additional limitations are not necessary. It is appropriate that the nominees not be inappropriately connected to the Company (1) so as to run afoul of listing standards or (2) so that the Company could game the system to use the rule to run an alternative candidate.
F.2. Is it appropriate to use compliance with state law, federal law, and listing standards as a condition for eligibility?	CalPERS is concerned that the effectiveness of the rule might be diluted by future state legislation.
F.3. Should there be requirements regarding independence from the company? Should the fact that the nominee is being nominated by a holder or group, combined with the absence of any direct or indirect agreement with the company, be a sufficient independence requirement?	Yes, there should be independence requirements of this type to ensure compliance with a Company's independence requirements and corporate governance best practices.
F.4. How should any independence standards be applied? Should the nominee and the nominating holder or group have the full burden of determining the effect of the nominee's election on the company's compliance with any independence requirements, even though those consequences may depend on the outcome of any election and may relate to the outcome of the election with regard to nominees other than holder nominees?	Because of the independence requirements of the proposed rule, there should not be a practical problem here – see F.3. above. If the nominee and nominating holder comply with the proposed rule any additional regulatory burdens should be on the company to ensure regulatory compliance.

F.5. Are the proposed standards with regard to independence appropriate? If not, what standards would be appropriate? If these limitations generally are appropriate, are there instances where they should not apply?	Yes, they are appropriate.
F.6. Where a company is subject to an independence standard of a national securities exchange or national securities association that includes a subjective component (*e.g.*, subjective determinations by a board of directors or a group or committee of the board of directors), should the holder nominee be subject to those same requirements as a condition to nomination?	No. CalPERS agrees with the approach of the proposed rule that subjective components of independence requirements would not need to be made.
F.7. As proposed, a nominating holder or group would be required to represent that the holder nominee satisfies applicable standards of a national securities exchange or national securities association regarding director independence, except where a rule imposes a standard regarding independence that requires a subjective determination by the board or a group or committee of the board. What independence requirements should be used if the company is listed on more than one market with such independence requirements? Should the nominating holder or group have the discretion to choose the applicable standards? Should the company have discretion to choose the applicable standards? Should all the standards of all markets on which shares are traded apply? Should the more stringent standards apply?	It would be acceptable to CalPERS if the more stringent standard is applied.

F.8. Should there be requirements regarding independence of the nominee from the nominating holder, group, or the company? If so, are the proposed limitations appropriate? What other or additional limitations would be appropriate? If these limitations generally are appropriate, are there instances where they should not apply?	No. CalPERS does not agree with the Commission's proposed rules in this regard. The goal of this rule is to allow shareowners to take action when a company's proxy process has been frustrated by a non-responsive company. The Commission should put little weight on commentators who complain that there will be a disruptive effect on boards per application of the proposed rule when that is exactly the point of the rule – to seek change and influence when a company has been non-responsive. With regard to the risk of "special interests" inappropriately influencing a company, there are more than adequate safeguards already in place. First, the nominee, if elected, will be subject to law imposing a fiduciary duty upon him or her to all shareowners. Second, the nominee will have to be elected by the shareowners who will have the benefit of the knowledge of any "special interests." Third, the proposed rule only allows a minimum number of directors to be elected via the proposed process. Therefore, any "special interest" threat will be sufficiently balanced by the election process and the full board. Notwithstanding the above, CalPERS would like more explanation of the special interest risk so that it can more adequately comment. Regardless, it appears the proposed rule in this regard is overinclusive in its attempts to prevent "special interest" influence. CalPERS and many of its investment managers are long term shareowners, sometimes with an active or relational strategy, and are more often than not very knowledgeable about a company. To force such a shareowner to find a sufficiently independent nominee will exclude very qualified nominees who are willing and able to serve. CalPERS and its active managers have consistently added value to their focus companies, but this proposal would prevent CalPERS from moving forward with the companies in most need of aggressive shareowner intervention, i.e., those companies who have not been responsive to the proxy process. CalPERS suggests an exception to the proposed independence standards that would recognize the value of permitting significant shareholders to nominate themselves. The exception should provide that any shareowner nominee (not group) that holds at least 2% would be exempted from the independence standards and would nominate himself or herself.

F.9. Should there be any standards regarding separateness of the nominee and the nominating holder or group? Would such a limitation unnecessarily restrict access by holders to the proxy process? If such standards are appropriate, are the proposed standards the proper standards? Should other standards be included? Should any of the proposed standards be eliminated?	See above.
F.10. Should there be a prohibition, as is proposed, on any affiliation between nominees and nominating holders or groups? If so, are the proposed rules appropriate? For example, we have proposed a definition of "immediate family" that is consistent with the existing disclosure requirement under Item 401(d) of Regulation S-K. Is this the appropriate definition for purposes of addressing relationships between the nominee and the nominating holder or group? If *not,* what definition would be more appropriate?	See above.
F.11. Should there be exceptions to the prohibition on any affiliation between nominees and nominating holders or groups? If so, what exceptions would be appropriate?	See above.
F.12. Is the two-year prohibition on payments from nominating holders to nominees appropriate? Should it be longer (*e.g.*, 3 years, 4 years, or 5 years) or shorter (*e.g.*, 1 year)? Should there be exceptions to this prohibition? If so, what exceptions would be appropriate?	See above.

F.13. Is the prohibition on direct or indirect agreements between companies and nominating holders appropriate? Would such a prohibition inhibit desirable negotiations between holders and boards or nominating committees regarding nominees for directors? Should the prohibition provide an exception to permit such negotiations? If so, what should the relevant limitations be?	Yes, the prohibition is appropriate as discussed above. While CalPERS could foresee a situation where it would like to negotiate with a company regarding a compromise candidate, it seems difficult to conceptually define an exception that would not put at risk the integrity of the process by allowing a company to game the process.
F.14. Should there be a nominee eligibility criterion that would exclude an otherwise eligible nominee or nominating holder or group where that nominee (or a nominee of that security holder or security holder group) has been included in the company's proxy materials as a candidate for election as director but received a minimal percentage of the vote? If so, what would be the appropriate standard (*e.g.*, 5%, 15%, 25%, or 35%)?	No. The triggering events are so substantial that this criterion is unnecessary and duplicative. In the event the Commission disagrees, the criterion in Exchange Rule 14a-8 is adequate.
F.15. **As** proposed, the rule includes a safe harbor providing that nominating holders will not be deemed "affiliates" solely as a result of using the holder nomination procedure. This safe harbor would apply not only to the nomination of a candidate, but also where that candidate is elected, provided that the nominating holder or group does not have an agreement or relationship with that director otherwise than relating to the nomination. Is it appropriate to provide such a safe harbor for holder nominations? Should the safe harbor continue to apply where the nominee is elected?	Yes, the safe harbor is appropriate.
G.1. Is it appropriate to include such a limitation on the number of holder nominees? If not, how would the proposed rules be consistent with our intention not to allow the proposed procedure to become a vehicle for changes in control?	CalPERS believes the proposed rule should not be utilized as a substitute for contested elections or to facilitate a takeover of a company. However, does not the Schedule 13G eligibility requirement already address this concern? For this reason, CalPERS does not understand the intellectual underpinning for limiting the number of nominees.

G.2. If there should be a limitation, is the proposed limitation appropriate? Should the number of holder nominees be higher or lower? Should the limitation instead be based on the total percentage of the board that the holder nominees would comprise? Should the limitation be the greater or lesser of the number or a specified percentage, rather than a set number, as proposed? Is it appropriate to permit more than one holder nominee regardless of the size of the company's board of directors?	Assuming a limitation is otherwise appropriate, CalPERS believes a higher limit is appropriate. One director is too low for any company. CalPERS has heard first-hand from directors who were lone representatives elected in a contested election. At a company where the triggering events have occurred it would not be surprising if a single director elected under this rule was treated materially differently than management endorsed directors, e.g., executive committees may be formed and information may be withheld,. While there is no guarantee that two candidates would not be similarly treated, allowing multiple candidates to serve at any company would minimize that risk and, at a minimum, make it more likely that candidates would serve, and continue to serve, in a hostile environment. While two directors should be the minimum allowed a higher percentage, e.g., 35%, should otherwise be the floor. In other words, the ceiling should be 2 directors or 35% of the board. whichever is laraer.
G.3. Should the number increase during the second year of the proposed procedure? Should the number decrease during the second year of the proposed procedure?	No changes should be made.
G.4. The proposal contemplates taking into account incumbent directors in the case of classified or "staggered" boards for purposes of determining the maximum number of holder nominees. Is that appropriate? Should there be a different procedure to account for such incumbent directors? Also with regard to staggered boards, should the procedure address situations in which, due to a staggered board, fewer director positions are up for election than the maximum permitted number of holder nominees? If so, how?	While CalPERS is concerned that the policy should not encourage classified boards, it does seem appropriate to consider incumbent directors in the case of classified boards for purposes of determining the maximum number of holder nominees. Notwithstanding the above, CalPERS believes that it should be able to run the maximum number of seats allowed by the rule in any one year even if the number of seats up for election is less, unless the addition of the maximum number of additional seats would violate a company's articles of incorporation or state law. In effect, shareowners could expand the size of the board by virtue of this rule unless such an action violates a company's articles of incorporation or state law.

G.5. We have proposed a limitation that permits the holder or group with the largest beneficial ownership to include its nominee(s) where there is more than one eligible nominating holder or group. Is this proposed procedure appropriate? If not, should there be different criteria for selecting the holder nominees (*e.g.*, length of security ownership, date of the nomination, random drawing, allocation among eligible nominating holders or groups, etc.)? Rather than using criteria such as that proposed, should the company's nominating committee have the ability to select among eligible nominating holders or groups?	At this time, CalPERS believes this is appropriate, though the Commission may want to specifically reexamine this portion of the proposed rule in a few years. CalPERS does not believe that the company's nominating committee should not be permitted to select among nominating holders or groups. This would be inconsistent with the stated goal of the SEC, to provide owners with greater ability to address non-responsive companies.
G.6. Rather than a limitation on the maximum number of holder nominees, should there be only a limitation on the number of holder nominees that may be elected?	No.
H.1. Are the proposed content requirements of the notice appropriate? Are there matters included in the notice that should be eliminated? Are there additional matters that should be included? For example, is there additional information that should be included with regard to the nominating holder or group (*e.g.*, disclosure similar to that required from participants in solicitations in opposition with regard to contracts, arrangements or understandings relating to the company's securities), or with regard to the holder nominee?	Yes, the content requirements are appropriate.
H.2. Are the required representations appropriate? Should there be additional representations? Should any of the proposed representations be eliminated?	Yes, the required representations are appropriate.

H.3. Is it appropriate to require that the notice (other than the copy of the Exchange Act Schedule 13G included in that notice) be filed with the Commission? Should additional or lesser information be filed with the Commission and be made publicly available? Is the proposed filing requirement appropriate? For example, should the notice be filed as an exhibit to an amendment to the nominating holder or group's Exchange Act Schedule 13G?	Yes, it is appropriate that the notice be filed with the Commission. Additional or lesser information should not be filed with the Commission and be made publicly available. The proposed filing requirement is appropriate; the notice should not be filed as an amendment to the shareowner's or group's Exchange Act Schedule 13G
H.4. When should the notice be required to be filed with the Commission? Should it be required to be filed at the time it is provided to the company? Should it be required to be filed within a specified period of time, such as two business days, after it is provided to the company, as is proposed? Should the information in the notice that is included in the company's proxy statement instead be filed on or about the date that the company releases its proxy statement to holders?	Within 2 business days seems appropriate.
H.5. What should be the consequence to the nominating holder or group of submitting the notice to the company after the deadline? Should such a late submission render the nominating holder or group ineligible to use the nomination procedure, as is currently proposed under the rule? What should be the consequence to the nominating holder or group of filing the notice with the Commission late? Should such late filing be viewed exclusively as a violation of Exchange Act Rule 14a-6 or should it affect eligibility to use the nomination procedure? Should the failure of a nominating holder or group to file the notice with the Commission be viewed exclusively as a violation of Exchange Act Rule 14a-6 or should it affect eligibility to use the nomination procedure?	**A** late submission to the Company should result in the ineligibility of the nominating shareowner or group. Failing to file timely or at all with the Commission should be viewed exclusively as a violation of Exchange Act Rule 14a-6 and should not affect eligibility. the nominating shareowner or group should be able to cure any defects of a timely filed notice with the Company or Commission.

H.6. The proposed notice requirements address both regularly scheduled annual meetings and circumstances where a company may not have held an annual meeting in the prior year or has moved the date of the meeting more than 30 days from the prior year. Under these circumstances, what is the appropriate date by which a nominating holder must submit their notice to the company? We have proposed a standard similar to that currently used in connection with the Exchange Act Rule 14a-8 holder proposal process. Is such a standard appropriate? If not, what standard would be more appropriate?	The Exchange Act Rule 14a-8 is an appropriate benchmark.
H.7. As proposed, Exchange Act Rule 14a-11 includes a number of notice and other timing requirements. Should these timing requirements incorporate or otherwise address any advance notice provisions under state law or a company's governing instruments? If *so,* should any advance notice provisions govern? Should they instead be provided as an alternative to the timing provisions set out in the rule?	Like Exchange Act Rule 14a-8, state law should not allow a company to insist on additional procedural or notice requirements.
I.1. Is it appropriate to require that the company include in its proxy statement a supporting statement by the nominating holder or group? If so, is it appropriate to limit this requirement to instances where the company wishes to make a statement opposing the nominating holder's nominee or nominees and/or supporting company nominees? Is it appropriate to limit the supporting statement to 500 words? If not, what limit, if any, is more appropriate? Is it appropriate to require filing of the statement on the date that the company releases its proxy statement to holders? If not, what filing requirement would be appropriate?	The rule should permit a supporting statement of 500 words per candidate irrespective of whether the Company includes its own supporting statement(s) or statement(s) of opposition. To allow a company to prevent a supporting statement by a nominating shareowner or group from appearing on the proxy would result in an uneven playing field since the Company could use the Company's resources to solicit votes in other ways, e.g., hiring a proxy solicitor and running advertisements. In instances where the Company does provide an opposition statement or a statement in support of its own candidate, the nominating shareowner or group should be provided with at least 500 words per candidate or equal space per candidate, whichever is greater.

1.2. Is it appropriate for the company to make the specified determinations regarding the basis on which a nominee would not be included? By what means should a company's determination be subject to review? By the courts? Should there be an explicit statement by the Commission regarding this review? Should any determination by the company be subject to review by the Commission or its staff? Should there be an explicit provision for such review, as, for example, with holder proposals under Exchange Act Rule 14a-8?	There should be a similar process for review and litigation as is available under Exchange Act Rule 14a-8.
1.3. Proposed Exchange Act Rule 14a-11(a)(3) provides that a company is not required to include a holder nominee where either: (a) the nominee's candidacy or, if elected, board membership, would violate controlling state law, federal law or rules of a national securities exchange or national securities association, (b) the nominating holder's notice is not adequate, (c) any representation in the nominating holder's notice is false in any material respect, or (d) the nominee is not required to be included in the company's proxy materials due to the proposed limitation on the number of nominees required to be included. Instruction 4 to proposed Exchange Act Rule 14a-11(a)(3) provides that the company shall determine whether any of these events have occurred. Should the nomination procedure include a procedure for a company to gather information additional to that included in the notice that is reasonably necessary for the company to make its determination in this regard? If so, please respond to the following additional questions.	The company's ability to request additional information and facts should be severely limited. A company where a triggering event has occurred may be inclined to spend unlimited resources harassing a shareholder group. If the company is allowed to, in effect, litigate a nominee's adequacy, this will add significant costs and hurdles to the process. For example, would companies have unfettered access to CalPERS' trading history of the company and the managers trading on its behalf to conclusively decide that CalPERS was obtaining the company's shares in the normal course of business? It is CalPERS' experience that companies where a triggering event has occurred will likely take such aggressive action because of a fear of conspiracy or unfairness against existing management. Also, analogous rights to information may not be so readily available to shareowners regarding the Company's candidates. In conclusion, all the information necessary to evaluate these issues should be in the required disclosures, which CalPERS believes, is already required.

1.3.a. Should the company be provided with a maximum amount of time to request specific information (*e.g.*, three days, five days, one week, two weeks, or one month)?	The Company's ability to obtain additional information must be severely limited.
1.3.b. Should nominating holders and/or nominees be provided with a maximum amount of time to respond to such a request (*e.g.*, three days, five days, one week, two weeks, or one month)?	To the extent the Commission insists on giving companies rights to additional information, the process must be easy and user friendly. Otherwise, the process will only be handled through the use of expensive outside consultants and lawyers at huge expense. To the extent this process can get mired down in litigation, the less likely it will provide any relief for shareholders and accountability for unresponsive boards.
l.3.c. Should the procedure prescribe the type of information that a company may request from a nominating holder or nominee? Should the procedure specify those representations in the nominating holder's notice to the company with regard to which the company may request information?	Yes, the information, if any, should be severely restricted.
1.3.d. Should the procedure include a method for a company to obtain follow-up information after a nominating holder or nominee submits an initial response? If so, should that follow-up method have similar time frames and informational standards to those related to the initial request and response?	See comments above.

1.3.e. Should the rule explicitly state that a nominee may be excluded from a company's proxy materials if the nominating holder or nominee does not provide the requested information in the required timeframe, or if the information does not confirm the representations included in the notice to the company, or is it sufficient to rely on the proposed provision that permits the exclusion of nominees when a representation is false in any material respect? In order to facilitate reliance on this proposed provision if a nominating holder or nominee fails to provide requested information, would it be appropriate to require that a nominating holder represent that the nominating holder or nominee will respond to a request by the company for information that is reasonably necessary to confirm the accuracy of representations of the nominating holder?	**A** no-action letter process should be followed. There should be notice and cure opportunities for shareholder nominees. Like any new rule there will be unforeseen issues and problems and the companies should not use these problems to exclude nominees from the proxy who were intended to be included. Therefore, a notice and cure period is necessary. **Also,** because of the occurrence of the triggering events it is likely that some companies will look for every loophole to exclude qualified nominees. If the rule is not simple and easy to follow and does not have a cheap and easy dispute resolution mechanism, it will not work as efficiently as it could.
1.3.f. Should this procedure be the same for operating companies, registered investment companies, and business development companies? Should there be unique procedures for different types of entities? If so, what is unique to a particular type of entity that would require a unique procedure?	No comment.

14. As proposed, the company must provide the nominating holder or group with notice of its determination whether to include in its proxy statement the holder nominee by a date that will generally fall approximately 30 days prior to the date the company will mail its proxy statement. Does this requirement allow the nominating holder or group adequate time to contest a company's determination with regard to a potential holder nominee? If not, what timing would be more appropriate? Is the timing requirement with regard to the nominating holder's submission of its statement of support to the company appropriate? If not, what timing would be appropriate?	The process should be expanded to allow for a dispute resolution mechanism that can be resolved prior to the printing of the proxy and without incurring large costs. 30 days may be too short.
15. As proposed, the rule would not provide a mechanism by which a nominating holder or group could "cure" a defective notice. Would such a "cure" period, similar to that currently provided under Exchange Act Rule 14a-8, be appropriate? If so, how and by what date should a company be required to notify a nominating holder or group of a defect in the notice? How long should the nominating holder or group have to cure any defects? Are there any defects that would not require notice by the company, for example, where a defect could not be remedied?	A cure period is crucial given the already complex nature of the rule and the unforeseen applications of certain rules.

1.6. As proposed, inclusion of a holder nominee in the company's proxy materials would not require the company to file a preliminary proxy statement provided that the company was otherwise qualified to file directly in definitive form. In this regard, the proposed rules make clear that inclusion of a holder nominee would not be deemed a "solicitation in opposition." Is it appropriate to view the inclusion of a nominee in this manner or should the inclusion of a nominee instead be viewed as a solicitation in opposition that would require a company to file its proxy statement in preliminary form? Should we view inclusion of a holder nominee as a solicitation in opposition for other purposes (*e.g.*, expanded disclosure obligations)?	We agree with the rule as proposed.
1.7. As proposed, the rule would prohibit companies from providing holders the option of voting for the company's slate of nominees as a whole. Should we allow companies to provide that option to holders? Are any other revisions to the form of proxy appropriate?	The rule should prohibit companies from providing holders the option of voting for the company's slate and provide a level-playing field between candidates. Allowing a shareholder to vote for an entire slate will have the potential effect of discouraging voters from taking the time and effort to identify whether any candidates are contested and to evaluate the qualifications of the competing nominees. Most importantly, many voters might mistakenly believe that the election is not contested.
J.1. Is it appropriate to characterize the statements in the nominating holder's notice as the nominating holder's representations and not the company's? Does the proposal make clear that the nominating holder would be responsible for the information submitted to the company? Should the proposal characterize these statements differently? If so, please explain in what manner.	Yes, the proposal is clear on these positions.
J.2. Does the proposal make clear the company's responsibilities when it includes such information in its proxy materials? Should the proposal include language otherwise addressing a company's responsibility for repeating statements that it knows are not	Yes, the proposal is clear.

accurate?	
J.3. Should information provided by nominating holders or groups be deemed incorporated by reference into Securities Act or Exchange Act filings? Why?	No, information should not be deemed incorporated by reference.
K.1. What requirements should apply to soliciting activities conducted by a nominating holder? In particular, what filing requirements and specific parameters should apply to any such solicitations? For example, we have proposed that certain solicitations by holders seeking to form a nominating group be limited to no more than 30 holders. Is this limitation appropriate? If not, what limitation would be appropriate, if any (*e.g.*, fewer than 10 holders, 10 holders, 20 holders, 40 holders, more than 40 holders)? In addition, is the alternate, content-based limitation appropriate? If not, what limitations would be more appropriate?	The proposed requirements are appropriate.
K.2. Should communications in connection with a direct access holder proposal, for example by holders seeking to form a more than 1% group to submit a holder proposal, be included in the exemption provided for communications between holders seeking to form a nominating holder group? Would such an exemption be necessary and/or appropriate? If so, what parameters should apply?	CalPERS thinks such communications are likely already exempted, but if they are not, they should be included in the exemption. CalPERS is not supportive of the proposed requirement that a group of at least 1% must submit a proposal for it to be applicable under this rule.
K.3. Should all soliciting materials be filed with the Commission on the date of first use? For example, as proposed, holder communications that are limited to no more than 30 holders would be filed with the Commission. Would such filing render the limitation unworkable in that the communication would be readily accessible to holders on EDGAR?	The solicitation material, if required to be disclosed, should be required to be filed within three days of first use. Requiring disclosure on first use may provide for numerous inadvertent violations of the law without any corresponding benefit, assuming the communications are filed timely, e.g., within three days.

K.4. We contemplate that solicitations in connection with elections involving Exchange Act Rule 14a-11 could involve electronic means. We have provided that, where requested, the company would include in its proxy materials the website address where solicitation materials related to a holder nominee may be found. Are there other steps that we should take to provide for or encourage the use of electronic means for these elections?	No comment.
L.1. Should the proposed holder nomination procedure apply to funds? If so, to which funds should it apply? Are there any aspects of the proposed nomination procedure that should be modified in the case of funds?	No comment.
L.2. Should we apply the "interested person" standard of Section 2(a)(19) of the Investment Company Act with respect to the representation that a holder nominee be independent from a company that is a fund? Should the "interested person" standard also apply to holder nominees for election to the board of directors of a business development company? Should we instead apply a different independence standard to funds or business development companies, such as the definition of independence in Exchange Act Rule 10A-3?	No comment.

L.3. Is it appropriate to require a nominating holder or group of holders of a mutual fund to provide disclosure of its 5% beneficial ownership of the fund's securities in its notice to the fund of its intent to require its nominee on the fund's proxy card? If so, what requirements from Exchange Act Schedule 13G (or other information) should be required to be included in the notice? Should such a holder or group instead be required to file on Exchange Act Schedule 13G upon reaching the 5% beneficial ownership threshold, in order to provide the fund with notice in advance that the holder or group has reached this threshold? If so, are there any requirements of Exchange Act Schedule 13G that should be modified for this purpose?	No comment.
L.4. Are the triggering events proposed for use of the holder nomination procedure appropriate for funds? Are there other nomination procedure triggering events that should be used?	No comment.
L.5. Should a fund be required to provide disclosure on Form N-CSR of whether it would be subject to the holder nomination procedure as a result of a holder vote with regard to any of the nomination procedure triggering events, and the required disclosure regarding such a nomination procedure triggering event? Will this disclosure allow sufficient time for a holder to effectively exercise the nomination procedure? Should this disclosure instead be required on a different form?	No comment.
L.6. We are proposing to delete as duplicative Item 77C of Form N-SAR, which currently requires disclosure regarding matters submitted to a vote of holders similar to that required by Item 4 of Part II of Exchange Act Form 10-Q, and move this disclosure to Form N-CSR. Should this disclosure remain in Form N-SAR?	No comment.

L.7. Should a fund be required to disclose on Exchange Act Form **8-K** the date by which a holder or group must submit the notice to the fund of its intent to require its nominees on the fund's proxy card? Should funds instead be permitted to provide this disclosure in a different manner?	No comment.
M.1. The proposal would provide that a holder or group would not, solely by virtue of nominating a director under proposed Exchange Act Rule 14a-11, soliciting on behalf of that candidate, or having that candidate elected, be viewed as having acquired securities for the purpose or effect of changing or influencing the control of the company. This provision would then permit those holders or groups of holders to report their ownership on Exchange Act Schedule 13G, rather than Exchange Act Schedule 13D. Is this approach appropriate? Should other conditions be required to be satisfied? If so, what other conditions?	Yes, this approach is appropriate.
M.2. Should nominating holders, including groups, be deemed to have a "control" purpose that would create additional filing and disclosure requirements under the Exchange Act beneficial ownership reporting standards?	No.

M.3. As proposed, holders that intend to nominate a director pursuant to Exchange Act Rule 14a-11 would be required to disclose this intent on Exchange Act Schedule 13G. Those filers who originally filed an Exchange Act Schedule 13G without an Exchange Act Rule 14a-11 intent would be required to amend their Exchange Act Schedule 13G to disclose such intent if it exists. Is it appropriate to require such an amendment by existing filers? If not, how should such filers indicate their intent to make a nomination pursuant to Exchange Act Rule 14a-11? Are the holder notice requirements of Exchange Act Rule 14a-11(c) sufficient for this purpose? Intent to use the nomination procedure would be evidenced in both new filings and amendments to already-filed Schedules by the beneficial owner checking the box on the cover page of the Schedule to identify the filing as having been made in connection with a nomination under the procedure and by making the proposed new certification regarding ownership of the required amount of company securities. Is this sufficient notice of the beneficial owner's intent to use the nomination procedure? Should we also require new disclosure related to such intent in a new item requirement to the Schedule? Would this be appropriate in light of the fact that Exchange Act Schedule 13G currently does not require such "purpose" disclosure?	Yes, such an amendment is appropriate where the intent of the shareowner is not specified. The Commission should Facilitate the ease of compliance by amending all forms "here helpful. The holder notice requirements of Exchange Act Rule 14a-11(c) are sufficient for this purpose.

M.4. As proposed, nominating holders and groups would be required to amend their Exchange Act Schedule 13G filings in accordance with the existing timing requirements for qualified institutional investors and passive investors. Should we instead require that such filers amend on a more expedited basis? For example, should such filers be required to report changes in the information reported previously promptly after such change or within another, specified period of time? Should amendments be limited to material changes in the information reported if such an expedited requirement is used? Should the election as director of a nominating holder group's nominee be deemed the termination of that group (provided that the group does not have an agreement to act together for some other purpose)? Should such an election require an amendment to the nominating holder or group's Exchange Act Schedule 13G?	The 13G requirements are adequate.
M.5. Are there any qualified institutional investors under Exchange Act Rule 13d-1(b) that would be qualified to file on Exchange Act Schedule 13G but should not be included in the category of filers who may nominate a director using the proposed procedure? If so, please explain why.	No.

M.6. A related issue with regard to beneficial ownership reporting is whether the withhold votes nomination procedure trigger may result in increased numbers of "vote no" campaigns by holders who are attempting to trigger the nomination procedure. The possibility of triggering Exchange Act Schedule 13D reporting requirements currently may have a chilling effect on holders who otherwise would organize such an effort. With regard to this concern, do the current rules under Exchange Act Regulation 13D have such a chilling effect? Are the current rules sufficient to determine when such activities should require additional holder filings? Should holders who organize such a campaign be deemed to have a control purpose or effect that would necessitate filing on Exchange Act Schedule 13D rather than Exchange Act Schedule 13G? Should we issue specific guidance with regard to these "vote no" campaigns and the beneficial ownership reporting requirements generally? Should any such guidance be limited to circumstances where the holder engaging in the "vote no" campaign does so solely to trigger the holder nomination procedure?	Yes, the current rules are a deterrent to pursuing vote no campaigns. For example, CalPERS' policy is to withhold votes where a company has not implemented a majority-vote shareholder proposal. CalPERS would like to pursue more vigorous vote no campaigns against these companies presently and regardless of this proposed rule. The 13D rules, we have been advised, limit our ability to pursue such initiatives without regulatory requirements meant to apply to shareholders attempting to take over a company. We "vote no" on hundreds of directors per year, not because we want to control a Company, but because the directors are not following what CalPERS considers best practices in the board room, and because often the directors and Company are unresponsive to the proxy process. The Commission should address this issue to allow "vote no" campaigns by investors such as CalPERS where directors are perceived by shareowners to be performing poorly or are otherwise not responsive to shareowners.
N.1. Would the proposed Exchange Act Rule 16a-1(a)(1) amendments address nominating holders and groups appropriately? Should the proposed exclusion be based on any additional or different conditions?	Yes, we believe they do. Additional or different conditions are not necessary.
N.2. If the Commission adopts a holder nomination rule with an eligibility threshold of 10% or greater, would Exchange Act Section 16 reporting and short swing profit liability deter the formation of nominating holder groups?	Yes, Exchange Act Section 16 reporting and short swing profit liability would deter the formation of nominating groups.

0.1. We solicit quantitative data to assist our assessment of the benefits and costs of enhanced holder access to company proxy materials when there has been a demonstrated failure in the proxy process. Will proposed Exchange Act Rule 14a-11 increase director accountability and responsiveness? If so, what costs would be incurred in instituting responsive policies and procedures? Will more accountability and responsiveness lead to better managed boards? What effects, if any, would increased accountability and responsiveness have on the board's time spent in its duties overseeing management?	CalPERS believes the cost-benefit analysis supports adoption of the proposed rule.
0.2. We solicit quantitative data on the potential increases, if any, of holder proposals under Exchange Act Rule 14a-8 as a result of these proposed rules. We also solicit quantitative data on how often the two triggering events that would activate proposed Exchange Act Rule 14a-11 would occur.	CalPERS believes the cost-benefit analysis supports adoption of the proposed rule.
0.3. We solicit quantitative date on the time and cost spent in preparing a no-action request to exclude a proposal under Exchange Act Rule 14a-8, the incremental cost spent to print and mail such a holder proposal and to include a holder nominee and his/her background information in the proxy materials, and the cost borne by both companies and holders to solicit holders regarding a direct access holder proposal and election of a nominee or nominees to the board.	CalPERS believes the cost-benefit analysis supports adoption of the proposed rule.