

Statement of Congresswoman Carolyn B. Maloney
SEC Proxy Access Proposals
Financial Services Committee
September 27, 2007
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I would like to thank Chairman Frank for holding this morning's hearing.

Back in June when we had all five of the SEC Commissioners before us, there was general agreement for a follow-up hearing on the issue of proxy access.

Since our hearing, the SEC has published for comment two proposals to amend its proxy rules.

The regulatory proposals were adopted by split votes of the Commissioners, with Chairman Cox casting the deciding vote on both proposals.

The comment period on both of these proposals will end on October 2nd.

Given the significance of these issues, which will affect the continued ability of shareholders to participate in the corporate governance of the companies they own, I know that many of us are interested in the perspectives of the witnesses on the proposals prior to the end of this comment period.

The pending proxy rule amendments were precipitated by the 2006 case of *AFSCME v. AIG*.

In that case, the Second Circuit Court of Appeals nullified an SEC staff interpretation allowing companies to exclude shareholder proposals that would establish procedures for shareholder-nominated candidates to be included on the corporate ballot.

The first (or short) proposal, adopted on a 3-2 vote, would codify in regulation the pre-*AFSCME* staff position, thus reversing the *AIG v. AFSCME* decision.

I have concerns that since the short proposal is a reaffirmation of the SEC staff position pre-*AFSCME*, if it were to be adopted it would continue to create uncertainty for both corporations and shareholders, and could lead to another round of litigation on the issue in the next proxy season.

The second (or long) proposal would establish procedures allowing shareholder proposals regarding director elections, subject to eligibility requirements, enhanced disclosure, and other requirements. This proposal was also adopted on a 3-2 vote.

Ultimately whatever is decided, I believe it will come down to a debate on the rights of the minority versus the rights of the majority.

Critics of the shareholder proposal process worry about the “tyranny of the minority” and that minor shareholders with a narrow agenda will drive up the costs of proxy solicitations and detract from the conduct of more relevant business at annual meetings.

Shareholder proponents question the characterization of all non-binding proposals as illegitimate and observe that even if socially-oriented proposals do not produce immediate results, they have played a useful role in the proxy process and in corporate governance.

In any case, I am certainly interested in hearing from our witnesses today on their thoughts and opinions on both of the proposals.

Again, I thank the Chairman for holding this morning’s hearing and I yield back.