February 24, 2015

The Honorable Mary Jo White
Chair
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: **Announcement regarding Rule 14a-8(i) (9)**

Dear Chair White:

The undersigned organizations—representing all sectors of the American economy—write to express our concern and alarm regarding the January 16 announcement ("Whole Foods") that the Securities and Exchange Commission ("SEC") Staff in the Division of Corporation Finance (the "Division") will express no views on the application of Rule 14a-8(i)(9) on any shareholder proposal during the 2015 proxy season. Such an abrupt change to the SEC's longstanding practice under Rule 14a-8, coming as many reporting companies are finalizing and distributing annual proxy statements, is extremely disruptive to fundamental governance. We also write to express our objection to the opaque process by which this sudden shift in policy was decided and communicated to the public, which threatens to undermine the integrity of an already challenging process.

This announcement, a departure from precedent and annulling a well-reasoned decision made just weeks earlier, benefits neither issuers nor investors and introduces major uncertainty into an already complex set of rules. We believe this reversal underscores why SEC policies must provide predictability and avoid creating ambiguity for all, rather than take abrupt action that advances the goals of a small minority of special-interest activists.

The announcement was made suddenly at the height of the shareholder proposal season on the eve of a three day holiday weekend. Indeed, it came not only after the deadline for submission of no-action request letters for many issuers had passed, but also after the boards of many companies had taken action. In some cases, companies had made public announcements of their intentions with respect to the disposition of proxy access proposals on the basis of the holding in the original Whole Foods no-action letter. We are especially concerned that the policy set forth in the announcement extends to *all* shareholder proposals that may conflict with the

issuer's proposal, not just those concerning proxy access, the subject matter before the Division in Whole Foods. As such, it will have a negative impact on issuers and investors with no stake at all in the proxy access debate, but who wish to seek the Division's guidance on an unrelated Rule 14a-8(i) (9) interpretive question. For all these reasons, both issuers and investors alike were substantially disadvantaged by the timing of this significant and unprecedented policy shift.

More troubling still, it also appears that this fundamental change in policy was made without any apparent consideration by, or formal vote of, the other four SEC commissioners. The announcement was simply a pair of statements by the Chair and the Division, not as action by the full Commission. We believe policy changes of this magnitude should only be made in a formal action by the full Commission.

Changing this policy in the midst of proxy season, and without due process, is fundamentally at odds with basic principles of good governance. By and large, issuers—including their board of directors—and investors depend upon the no-action process to resolve most disputed shareholder proposals and obtain a reasonable assurance that their future actions will not lead to an SEC enforcement action. Interested parties must rely—and must be able to rely—on the policies and procedures that the SEC has established. The SEC should not impair the legitimate and significant reliance interests of those issuers and investors by making significant changes without notice or any opportunity for public comment. In short, implementing such a shift notwithstanding widespread reliance by the public has the effect of changing the applicable law and imposing new obligations in midstream.

More technically, we believe that when an agency such as the SEC has definitively announced its interpretation of a regulation, and where private parties have relied on that interpretation, the Administrative Procedure Act ("APA") requires the agency to give notice and respond to comments before significantly shifting course. This position, consistent with the APA's text and compelled by its purpose, protects the legitimate reliance interests of the regulated community and operates so that agencies have the information and feedback needed to regulate in a factually sound, publicly accountable manner.

Lastly, the January 16 announcement places issuers and their shareholders in a state of uncertainty, and presents them with a series of questions for which there may be no good answers. Some of these questions may include:

- For those issuers wishing to present their own alternative proposal to shareholders for consideration, and who cannot get no-action assurance, should they exclude a shareholder proposal in favor of their own and face the heightened risk of litigation with the proponent or the SEC?

- Do they risk shareholder confusion by including both their own proposal and a competing one from a proponent? If they do, what happens if shareholders approve both proposals?

- Should companies seeking certainty be forced to incur the added expense and distraction to management of seeking declaratory relief in federal district court since the Division refuses to take any position on the SEC's own rule?

It is self-evident why none of the foregoing alternatives is particularly attractive to public companies or their shareholders. These points of confusion are just some of the unintended consequences that the January announcement may trigger.

In closing, we respectfully urge you to restore predictability and certainty to the no-action relief process under Rule 14a-8(i) (9) without delay. This corrective action would be in keeping with the SEC's general reputation and record of acting in a deliberate, balanced, and transparent manner on behalf of all stakeholders.

Sincerely,

American Bankers Association
American Insurance Association
American Petroleum Institute
Association for Corporate Growth
Center On Executive Compensation
Financial Services Roundtable
Independent Community Bankers of America
The Latino Coalition

National Association of Convenience Stores
National Association of Corporate Directors
National Association of Manufacturers
National Black Chamber of Commerce
Retail Industry Leaders Association
Securities Industry and Financial Markets Association
Society of Corporate Secretaries and Governance Professionals
TechNet
U.S. Chamber of Commerce

Cc: The Honorable Luis A. Aguilar
The Honorable Daniel M. Gallagher
The Honorable Kara M. Stein
The Honorable Michael S. Piwowar
Mr. Keith Higgins Director, Division of Corporation Finance
Ms. Anne K. Small, General Counsel