

## W. DON CORNWELL

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Via E-Mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

Attention: Elizabeth M. Murphy, Secretary

Re: File No. S7-10-09: Shareholder Director Nominations

Ladies and Gentlemen:

I am writing to advise you of my comments on the Commission's "proxy access" proposal. My comments reflect my experience as a director of a number of public companies. I have served on the boards of four public companies, ranging from among the smallest to among the largest in terms of market capitalization. At these companies, I have been a member or chair of the audit and compensation committees. Currently, I serve on the boards of directors of Avon Products, Inc. and Pfizer Inc.

I urge the Commission not to adopt the proposal for the following principal reasons:

1. The proposal would adversely affect the functioning of boards and would therefore be detrimental to shareholders.
2. The proposal is unnecessary given both (a) the high level of director accountability and responsiveness to shareholders and (b) recent enhancements to the processes by which directors are selected and elected.
3. The proposal would impose a rigid proxy access regime and would not permit the development of alternative approaches that may be better suited to particular companies. Even where shareholders overwhelmingly approve alternative ways of implementing proxy access, the proposal would bar them from doing so.

The proposal would adversely affect the functioning of boards due to several factors. First, directors who are nominated and elected through the efforts of a particular shareholder or group of shareholders are likely to seek to advance the interests of that shareholder or group rather than the interests of shareholders generally. In that regard, I understand that the proposal would not require a shareholder-proposed nominee to be independent of the shareholder or group seeking to nominate the nominee. As a result, any such nominee who is elected may lose sight of his or her fundamental loyalty to all shareholders,

notwithstanding the Commission's belief that, once elected, such a nominee will be subject to, and will act in accordance with, customary fiduciary duties.

In addition, under the proposal, if a shareholder-proposed candidate meets the minimum independence standards of the exchange on which the company is traded, the company would have to include that candidate in its proxy materials. The company's own standards and processes for assessing that candidate's independence, integrity, abilities and other characteristics would not apply. The proposal would therefore disregard the robust governance standards and practices that have been developed over time by many companies (including both Pfizer and Avon) to address their industries, culture and other unique characteristics. For that reason, the proposal would facilitate the election of directors whose experience and abilities do not match the company's needs.

Further, the proposal would lead to increased numbers of contested elections. Election contests of any kind are invariably disruptive to the ongoing functioning of a corporate enterprise. At a minimum, they create uncertainty among employees at all levels as to the future composition of the board, possible management changes, and changes in the company's strategic direction and other attributes that customarily flow from modifications in board composition. In fact, the increased frequency of contested elections might cause some directors not to seek re-election. These factors, among others, would impair the levels of candor and collegiality needed for the optimal functioning of a board and would likely adversely affect shareholder interests.

The proposal also overlooks the high level of director accountability and responsiveness to shareholders and their concerns. It incorrectly assumes that directors are generally not accountable or responsive, when in fact the overwhelming majority of directors are highly accountable and responsive. In addition, the proposal ignores the many improvements in the processes by which directors are nominated and elected, including the implementation of a majority, rather than a plurality, voting standard in the election of directors and the elimination of classified, or staggered, boards. (Both Pfizer and Avon Products have adopted these improvements.) Many companies have also adopted corporate governance guidelines and other practices to ensure the highest levels of director independence, integrity and ability. In my opinion, these and other modifications have greatly enhanced the processes by which directors are nominated and elected. The proposal would not improve these processes. Rather, it would have the opposite effect because (a) it would result in contested elections, causing companies to use a plurality voting standard, and (b) corporate governance guidelines calling for greater director independence and other standards would not apply to eligible shareholder-designated nominees.

Although the proposal is ostensibly designed to increase shareholder influence, it ironically would bar shareholders, as well as boards of directors, from implementing alternative forms of proxy access. It would therefore preclude proxy access regimes that might be better suited to a particular company. The SEC should not implement this inflexible approach to proxy access.

Please note that my comments do not necessarily reflect the views of any of the companies on whose boards I serve.

Thank you for your consideration.

Very truly yours,

*W. Don Cornwell/rl*

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