



November 25, 2009

Elizabeth M. Murphy
Secretary
United States Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: File No. S7-22-09, Amendments to Rules Requiring Internet Availability of Proxy Materials

Dear Ms. Murphy:

The American Business Conference (ABC) is a Washington-based coalition of CEOs of midsize growth companies founded in 1981 by Arthur Levitt, Jr. The current chairman of ABC is Alfred West, Chairman and CEO of SEI Investments, Oaks, Pennsylvania. ABC is submitting this comment letter in response to the Commission's proposed rule *Amendments to Rules Requiring Internet Availability of Proxy Materials*.

Background

The Commission's "Notice and Access" regime has reduced printing and postage costs for many issuers. By reducing the use of paper, it has also had a small but salutary effect on the environmental impact of the proxy process.

Unfortunately the "Notice and Access" model has had the perverse effect of suppressing the vote of individual shareholders. This was a predictable turn of events.¹ We congratulate the Commission for coming to terms with the problem and seeking, in this proposed rule, to do something about it.

¹ Letter of John Endean, President, American Business Conference to Nancy M. Morris, Secretary, United States Securities and Exchange Commission, Re: File No. S7-10-05, February 16, 2006. Available at: <http://www.sec.gov/rules/proposed/S71005/S71005-129.pdf>.

Mid-cap and small-cap companies have a keen interest in seeing the problem solved. Mid-cap and small-cap firms tend to have a high proportion of individual shareholders in their ownership base. When those shareholders do not vote, companies must pay solicitors to urge them to do so. In the meantime, big companies, with a very high proportion of institutional voters, can afford to write off individual shareholder votes as inconsequential for the efficient conclusion of their annual meetings.

More important than its disproportionate, negative effect on smaller public companies, the anemic voting rate of individual shareholders is an embarrassment to everyone involved in the capital markets. The fact is, even before Notice and Access, the voting rate of individual shareholders was low. Notice and Access made the problem worse – much worse. By doing so it may have done everyone a favor. This is a problem that no one can now ignore, particularly in an era when shareholders are being given a greater voice in corporate governance, up to and including, perhaps, decisions on executive compensation. The integrity of proxy voting is not just a matter of counting the votes correctly. It also means providing all shareholders with the means to have their views counted in the first place.

Increasing informed shareholder participation

ABC supports the Commission's proposed amendments to the Notice and Access process as a first step toward mitigating the decline in individual shareholder voting while retaining that process's benefits. However, we think the results of these changes will be modest.

Studies submitted during the Notice and Access rulemaking indicated that requiring shareholders to take an additional affirmative step to receive their proxy materials would cause a severe drop-off in individual shareholder participation.² None of the proposed changes to Notice and Access will affect the critical change of the “default” – that is, requiring interested shareholders to “pull” proxy materials rather than “pushing” materials to every shareholder in a form of their choosing.

² See, e.g., the comment letter of Richard J. Daly, Automatic Data Processing, on Release Nos. 34-52926; IC-27182; File No. S7-10-05 (February 13, 2006); Available at <http://www.sec.gov/rules/proposed/s71005/adp021306.pdf>.

There is an obvious next step that we strongly recommend the Commission consider: client directed voting (CDV). CDV would permit individual shareholders to establish standing voting instructions with their broker. Each proxy season, the shareholder would receive a personalized voting form for each meeting that reflected his or her stated preferences. Shareholders would either vote those preferences or, if they wish, override the instructions on any given question of their choosing. Much has already been written about CDV and its similarity to the tools institutional investors already have at hand, such as proxy advisory companies.³ We will not repeat those points here except to note that the burden is now surely on those who would deny individual shareholders an instrumentality that institutional shareholders take for granted.

The question we would like to address here is whether CDV fulfills, in the language of the Release, “the Commission’s regulatory interest in informed shareholder participation.” The key word here is “informed,” of course.

What does it mean to be an “informed” voter of a proxy? If it means a thorough familiarity with the regulatory disclosures the Commission demands of issuers, the community of informed voters is pretty small and certainly would not include all institutional investors. The Commission does not insist that individuals (or institutions) read a company’s 10-K before buying that company’s stock and so it would be surprising if the Commission rejected CDV’s standing instructions format because it does not necessarily insure that investors would study all the proxy materials for all the companies before voting the shares they have already purchased.

Nor does being an “informed” investor necessarily mean expressing dissatisfaction with the way a particular company is run. Lately, we have come to see institutional shareholder activists purporting to exert a kind of Galbraithian countervailing force against the excesses of management. Whatever the merits of this idea, individual shareholders are not part of it. Most individual investors, when they vote, vote with management. This is not a sign of ignorance. Individual investors register their dissent by either selling a company’s stock or not buying it in the first place.

The more important question, then, is not whether investors are “informed” but whether they are true to the assumptions underlying our system of corporate governance. We think individual investors are in this sense

³ See, e.g., John Endean, “Endangered: The Individual Shareholder Vote,” *Directors and Boards*, April 2009. Available at <http://directorsandboards.com/DBEBRIEFING/April2009/Feature409.html>.

exemplary. They cast their votes with the simple, direct economic motivation that all shareholders are assumed to have in common under corporate law. As we know from various accounts of empty voting and “morphable” shares, this cannot be assumed with all institutional votes.

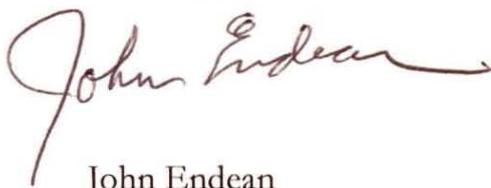
Unlike shares voted by the managers of institutional funds, or their designees, individual shareholders’ votes always reflect the preference of people who have invested their own money in the company. It is a fair assumption that individuals know why they own the stock and are motivated to maximize the value of their investment in the company’s shares.

Conclusion

It is thus more than just desirable that individual shareholders participate in the proxy process. It is urgent that they do so. Their voice is significant. Without it, the balance of influence in corporate governance will continue to shift toward institutions and proxy advisers, a development abetted by unfounded assumptions about the superior intelligence of those groups.

We hope the Commission will approve the changes in Notice and Access outlined in this release and then move expeditiously toward client directed voting as a real means, together with investor education, of ensuring that individual investors have a better opportunity to participate in the proxy process to the benefit of both shareholders and the companies.

Sincerely,

A handwritten signature in cursive script that reads "John Endean". The signature is written in dark ink and is positioned to the left of the typed name and title.

John Endean
President

cc: Honorable Mary L. Schapiro, Chairman
Honorable Luis A. Aguilar, Commissioner
Honorable Kathleen L. Casey, Commissioner
Honorable Troy A. Paredes, Commissioner
Honorable Elisse B. Walter, Commissioner