



*March 26, 2004*

Re: File Number S7-19-03

Mr. Jonathan Katz

**Secretary**

U. S. Securities and Exchange Commission

450 Fifth Street, N.W.

Washington, D.C. 20549-0609

Dear Mr. Katz:

On behalf of the board of the National Association of Corporate Directors (NACD), we once again commend the Securities and Exchange Commission and its staff for your ongoing efforts to defend the rights of shareholders and to protect the value of their investments.

With this letter, we would like to repeat and expand our earlier comments re the proposed rule on "Security Holder Director Nominations" (34-48626). We believe that the Commission should consider making some changes to the format of both the proxy statement and the proxy card:

- Cards should be clearly marked for Yes, No, and Abstain. Although arcane state laws regarding plurality may impose some impediments to change in this regard, we believe that this is an area where federal law could provoke needed modernization.
- Beyond the current disclosures, proxy statements should also clearly disclose relationships that director candidates have with incumbent directors and with members of management.

Furthermore, as stated in our letters of December 22, 2003, and March 9, 2004, we believe that the investing public should be given additional time to evaluate the impact of new reforms prior to the launch of yet another regulatory initiative that could dramatically alter the composition and leadership of boards.

We understand fully that the SEC may want to take decisive action on the subject of director nominations *now*, rather than waiting for many months or years. When NACD leadership and staff attended your Roundtable on March 10, 2004 (with our director Warren Batts and our governance counsel Ira Millstein as panelists), we could not fail to notice how strongly the institutional shareholders supported your proposed reforms.

Since one of your primary responsibilities is to administer federal securities laws that seek to provide protection for investors, you obviously cannot ignore this groundswell of interest and support. On the other hand, we witnessed how adamantly representatives of major corporations opposed the rule, some stating that they might take legal action to prevent it. Therefore, for the benefit of the investing public and for the good of capital markets, we would like to propose a middle ground.

We support any initiative that keeps the role of director nominations under the guidance of an independent board nominating committee. The best approach, in our view, would be to benchmark current nominating committee reforms, both required and recommended.

We propose that the SEC consider ways to benchmark the progress being made by board nominating committees. To help the SEC in this regard, we have abstracted 12 Principles for Nominating/Governance Committees into a form. The text of the form is based on the Commission's current disclosure regulations and on the Task Force report we recently did with the Council of Institutional Investors. Companies could use this form voluntarily to show their compliance with the goals of the Commission *now*, during a time investors want to see proof of progress.

Standard 1 is required of New York Stock Exchange Companies. Standards 1-10 are required on at least a disclose-or-explain basis under the Commission's final rule of November 24, 2003, for Disclosure Regarding Nominating Committee Functions and Communications Between Security Holders and Boards of Directors (<http://www.sec.gov/rules/final/33-8340.htm>). The Commission requires Standards 9 and 10 absolutely. The Commission does not require Standards 11 and 12 yet; these standards are based on the recent Task Force white paper from the Council of Institutional Investors and the National Association of Corporate Directors.

Note: In places where the word "INSERT" appears, nominating committees would insert their own materials, as indicated. The NACD has published educational materials that could assist companies in formulating their answers (see asterisked items).

## **12 PRINCIPLES FOR EFFECTIVE NOMINATING/GOVERNANCE COMMITTEES**

1. OUR BOARD HAS A STANDING, INDEPENDENT NOMINATING COMMITTEE OR A COMMITTEE PERFORMING A SIMILAR FUNCTION—SUCH AS A GOVERNANCE COMMITTEE (*AS REQUIRED* OF NEW YORK STOCK EXCHANGE COMPANIES).
2. OUR BOARD NOMINATING COMMITTEE (OR SIMILARLY TASKED COMMITTEE, E.G., GOVERNANCE COMMITTEE) ADHERES TO A CHARTER THAT WE DISCLOSE IN THE PROXY STATEMENT AND ON OUR WEBSITE.
3. OUR COMMITTEE HAS A POLICY AFFIRMING THAT WE WILL CONSIDER DIRECTOR CANDIDATES AS RECOMMENDED BY SHAREHOLDERS.
4. OUR COMMITTEE DISCLOSES THE PROCEDURES IT USES TO CONSIDER CANDIDATES RECOMMENDED BY SECURITY HOLDERS. THESE PROCEDURES ARE AS FOLLOWS: [INSERT NOMINATING COMMITTEE PROCEDURES HERE.]
5. OUR COMMITTEE HAS SET THE FOLLOWING SPECIFIC, MINIMUM QUALIFICATIONS FOR ALL NOMINEES TO A POSITION ON OUR BOARD OF DIRECTORS.\* [INSERT SPECIFIC DIRECTOR QUALIFICATIONS HERE.]
6. OUR COMMITTEE HAS SET THE FOLLOWING SPECIFIC QUALITIES AND SKILLS THAT WE BELIEVE ARE NECESSARY FOR ONE OR MORE OF THE COMPANY'S DIRECTORS TO POSSESS.\*\* [INSERT SPECIFIC QUALITIES AND SKILLS LIST HERE.]
7. OUR COMMITTEE USES THE FOLLOWING PROCESS FOR IDENTIFYING AND EVALUATING NOMINEES FOR DIRECTOR.\*\*\* [INSERT DESCRIPTION OF PROCESS HERE.]
8. OUR COMMITTEE GIVES EQUAL CONSIDERATION TO CANDIDATES RECOMMENDED BY SHAREHOLDERS, AS LONG AS THESE CANDIDATES

MEET THE QUALIFICATIONS AND POSSESS THE QUALITIES AND SKILLS LISTED ABOVE IN POINTS 5 AND 6.

9. *AS REQUIRED*, WE HEREBY DISCLOSE THE CATEGORIES OF PERSONS OR ENTITIES THAT RECOMMENDED THE NOMINATIONS RECEIVED THIS YEAR TO DATE THAT APPEAR ON THE PROXY, INCLUDING BUT NOT LIMITED TO SECURITY HOLDERS, NON-MANAGEMENT DIRECTORS, CHIEF EXECUTIVE OFFICERS, OTHER EXECUTIVE OFFICERS, THIRD-PARTY SEARCH FIRMS, OR OTHER, SPECIFIED SOURCE. IN ADDITION TO THESE CATEGORIES, THE FOLLOWING ARE THE NAMES OF 5 PERCENT SECURITY HOLDERS THAT HAVE SUBMITTED NOMINATIONS AND PERMITTED US TO PUBLISH THEIR NAMES: [DISCLOSE CATEGORIES AND, IF PERMITTED, SPECIFIC SOURCES HERE.]
10. *AS REQUIRED*, WE HEREBY DISCLOSE WHETHER WE ARE RETAINING PROFESSIONAL SERVICES IN RECRUITMENT AND EVALUATION, AND IF SO WHAT THESE SERVICES ENTAIL: [INSERT SERVICE DETAILS HERE.]
11. THE FOLLOWING IS CONTACT INFORMATION FOR THE INDEPENDENT CHAIR OF THE COMMITTEE: [INSERT CONTACT INFORMATION HERE.]
12. THE CHAIR OF THE NOMINATING COMMITTEE WILL BE AVAILABLE TO TAKE QUESTIONS FROM SHAREOWNERS AT THE ANNUAL SHAREOWNERS' MEETING.

The above asterisks describe relevant guidance published by the NACD. They are for the Commission's reference, not for the sample form: \*Cf. *Report of the NACD Blue Ribbon Report on Director Professionalism* (NACD, 2001). \*\* Ibid. \*\*\*Cf. *Report of the NACD Blue Ribbon Commission on Board Evaluation* (NACD, 2001).

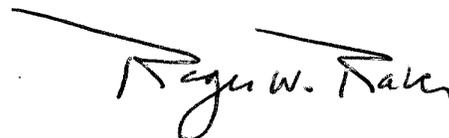
We believe that the form we are proposing can help boards and shareholders determine the extent to which nominating/governance committees are conforming to the letter and spirit of current reforms. The Commission may wish to consider this as an adjunct to and/or acceleration of current disclosure requirements. Meanwhile, we would welcome the opportunity to help the SEC refine, promote, and track these standards.

In closing, we hope that the SEC finds this suggested approach an appropriate middle ground in its effort to respond to shareholder concerns about director nominations.

Sincerely,



B. Kenneth West, Chairman



Roger W. Raber, CEO and President