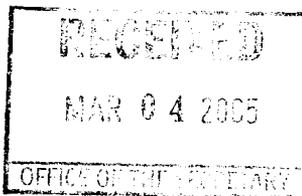


CHAIRMANOFFICE

S7-19-03

ES1113 11

From: Joe Grundfest [grundfest@stanford.edu]  
Sent: Tuesday, February 22, 2005 6:25 PM  
To: chairmanoffice@sec.gov  
Subject: Shareholder Access



1017

Bill:

This email is to follow up on our conversation regarding the shareholder access rule.

The two pieces I mentioned can be found on the Commission's website at the following URL's.

<http://www.sec.gov/rules/proposed/s71903/grundfestascsbgi040704.pdf>

<http://www.sec.gov/spotlight/dir-nominations/grundfest032004.pdf>

The first URL contains the specific proposal supported by Barclays and by the American Society of Corporate Secretaries. This is the only proposal of which I am aware that has support from both the shareholder and corporate constituencies and does, I believe, represent a politically workable solution to the problem. As you will observe, the proposal relies exclusively on the Commission's well-established authority to regulate disclosure and intrudes not at all into matters of state law.

The second URL contains the Harvard chapter that lays out the theoretical foundation for the application of the Advice and Consent principle. It explains why we should rationally expect that board should be able to do a better job of identifying appropriate new members, provided that they are subject to real discipline in the form of a veto, as exists in the Constitutional confirmation process.

From a political perspective, the advice and consent approach has several appealing characteristics. It is moderate and sensible when compared to other proposals on the table. It cannot be hijacked by special interest constituencies. It will gain support from the corporate and institutional investor communities (although there will be griping because each side will see it itself as getting half a loaf - - but they would prefer it to the alternative). It will be popular on the Hill and in the public press because of the analogy to the Constitutional process.

There is much more to share about this process, and it probably makes sense to follow up in a phone call.

Regards,

Joe Grundfest

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