

August 24, 2010

Ms. Elisse B. Walter  
SEC Headquarters  
100 F Street, NE  
Washington, DC 20549

Dear Elisse:

I recently read that you earned your BA in mathematics. Perhaps you are the appropriate person to educate your compatriots in the simple art of counting. They seem to have no problem when it comes to the Proxy issue. In that area a shareholder counts as a shareholder even if their stock is in "street name". Somehow this clarity gets lost when it comes to the counting of shareholders for Section 12(g) of the Exchange Act which allows public companies to deregister if they have fewer than 300 "holders of record." For many years, the SEC and the investment industry have discouraged shareholders from holding physical securities in their own name and encouraged them to hold their book-entry shares with their broker in "street name." When shares are held in "street name," the "holder of record" for purposes of the SEC's rules is the broker, rather than the actual shareholder. Since large broker-dealers hold thousands of customer accounts, all of which count as "one" for purposes of determining the number of holders of record, many public companies have less than 300 holders of record. During the last several years, many companies have taken advantage of this loophole to deregister or "go dark." When a company goes dark, they no longer are obligated to file reports on Forms 10K, 10Q or 8K, file proxy statements, comply with the insider trading reporting rules or make other required disclosures to shareholders under the Exchange Act. Academic studies indicate that a company's stock price falls about 30% when it goes dark. Since the company's management has access to information about the company, they often take advantage of the lack of transparency to buy shares back from the public at a favorable price, in effect "going private" by defrauding their shareholders.

There have been many complaints made to the SEC about this practice, including a public petition for a change in the rules. In 2007, the Advisory Committee on Smaller Public Companies, a blue ribbon committee organized by the SEC, urged the SEC to change the current rules to count all shareholders, rather than just record holders. The Committee described the current abuse of shareholders taking place in this market in a report that is part of the public record.

To date, the SEC has taken no action to remedy this abuse. Perhaps the investing public can count (intended pun) on you to right a wrong. In sum, I seek your help.

Thanks in advance.

With all best regards,  
Philip V. Oppenheimer

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