



# LIUNA!

August 14, 2009

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Ms. Elizabeth M. Murphy  
Secretary  
U.S. Security and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090



RE: File Number S7-10-09- Facilitating Shareholder Director  
Nominations, Proposed Rule

Dear Ms. Murphy:

We strongly believe that shareholders must be given the right and ability to nominate and run candidates for board seats and we believe that the time has finally come for true and meaningful proxy access. It is with this belief and on behalf of the 550,000 members and retirees of the Laborers' International Union of North America (LIUNA), I am pleased to comment on File Number S7-10-09, "Facilitating Director Nominations." Our Union has over 100 individual Benefit Funds with over \$30 billion in assets. Our Funds are long-term investors and they represent the deferred income of thousands of LIUNA members and their families.

Our Funds have adopted active ownership principles and actively engage corporations on a number of issues every year. We believe that the issue of proxy access is among the most important corporate governance concerns and a reform that we have been waiting decades for. We believe more than any other single reform, proxy access has the power to bring real, lasting change to corporate board rooms and to allow shareholders' voices to finally be heard in corporate boardrooms across the United States.

LIUNA Benefit Funds have been the proponents of over 300 shareholder proposals since 2005. These shareholder proposals cover such issues as executive compensation, director and board independence, and majority voting for director elections. The vast majority of these proposals have been precatory proposals that the corporations can and often do ignore, even after a majority vote for a proposal by shareholders. Our Union has also directed successful "vote no" campaigns at listed corporations. However, without a majority vote standard, as well as a real director option for whom shareholders can vote, these campaigns have not always lead to substantive change at these corporations.

*Feel the Power*

Ms. Elizabeth M. Murphy  
August 14, 2009  
Page 2

I. Current proxy process makes it nearly impossible for shareholders to engage with ineffective Boards.

The current economic crisis in the U.S. has highlighted the fact that some Boards of Directors are simply not doing the job that they were hired to do by their employers who are the shareholders. Making this problem even worse is that the current laws highlight a deeply flawed director nomination process that does not take into consideration shareholder concerns.

As an example, this year LIUNA Funds followed closely the director elections at Pulte, Inc., a large residential home builder based in Detroit, MI. Over the last 3 years, the Pulte Board of Directors have ignored majority votes by shareholders on adopting a majority vote standard for the election of directors, as well as a shareholder proposal to declassify the Board of Directors, which this year received a vote of 71% in favor. The company also suffered poor performance as compared to other similarly situated companies. Because of this, all three directors up for election failed to garner a majority vote of those cast. This year's director elections are hardly the first sign of profound shareholder discontent with Pulte. At the 2008 annual meeting, each of those three incumbents running in the classified board elections failed to receive support from over 40% of shareholders despite the unanimous support of the rest of the Board. This represents a majority of outside shareholders. There is little or no evidence that the Nominating and Governance Committee took any action to respond to shareholders or correct the issues of shareholder concern. However, the Company failed to accept the Board Members' resignation and instead reappointed them to the Board.

Next year, shareholders can attempt to once again hold Pulte's Board of Directors responsible for their decisions and withhold their votes yet again from director's re-election, but of course the Company has consistently demonstrated that they are not willing to listen to shareholder demands. Alternatively, shareholders can mount an expensive proxy fight to run a slate or individuals to the Board. However, based on the past performance of the Company, shareholders could expect that the Company would mount expensive litigation and use the company coffers to fight any outside entity attempting to infiltrate the Board.

This situation highlights why shareholders need a new system that will allow for a meaningful ability to hold directors accountable for their actions. Our

Ms. Elizabeth M. Murphy

August 14, 2009

Page 3

Funds are generally invested through passive, indexed investments which do not allow them to just sell the stock when they disagree with management actions. Therefore, we believe that the proposed rule is a way to empower shareholders and will not leave institutional shareholders like us behind.

II. The SEC has clear authority to propose rules on proxy access under Section 14(a) of the Securities and Exchange Act of 1934.

One of the central responsibilities that Congress granted to the Securities and Exchange Commission was the regulation of the corporate proxy process and disclosure. Section 14(a) of the Securities and Exchange Act of 1934 makes it clear that corporate proxy regulation is under the purview of the SEC stating that the Commission can act to issue rules, "as necessary or appropriate in the public interest or for the protection of investors."<sup>1</sup> Some opponents to the proposed rule, we believe, misread the intent of the Act. We also believe that the proposed rule does not make any substantive change to the balance of power between shareholders and corporation. Further, any claims that the proposed rule would violate state law is without merit as state law still allows investors the ability to nominate director candidates and provide the disclosures needed for an informed vote.

III. The holding period for determining "long-term investor" should be changed to two years instead of one.

We believe that the proposed rule's one-year holding period should be changed to two years. We believe this proposed rule should be applicable only to long-term investors, not to short term investors, like hedge funds, that may not have the same interests in the long-term health of the company. We believe that this proposed rule should not be used as a tool for short-term access to positions on the Board of Directors at the expense of long-term value creation. Therefore, we respectfully request that the holding requirement be changed to two years instead of the one proposed by the Commission.

IV. The Proposed Rule should be applicable to all publicly traded corporations, not just those that meet certain "triggering requirements."

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<sup>1</sup> 15 U.S.C. 78n(a).

Ms. Elizabeth M. Murphy

August 14, 2009

Page 4

We strongly oppose limiting the application of the proxy access rule to the occurrence of certain “triggering events.” In 2003 we remarked that, “triggering requirements are time consuming and unnecessary given the high ownership threshold to place nominees on the proxy.”<sup>2</sup> We believe that the same holds true today. We agree with the current proposed rules that excluding triggering requirements from any final rules will allow long-term shareholders to nominate directors at all companies, not just at those with particular governance or performance concerns. We believe that this proposed rule should have clear, concise rules that apply to all corporations across the board that would have the effect of making the rule more accessible to all shareholders that meet other eligibility requirements.

V. The SEC should clarify the computation method used to determine eligibility.

As we discussed above, our funds are generally indexed, passive investors in listed corporations. Therefore, our ownership of shares owned and entitled to vote in these companies fluctuates over time due to rebalancing of the portfolio, share lending, and other investment activities. We believe that the SEC should clarify that the calculation of shares owned during the pre-14N time period be used to calculate total share ownership. In addition, the calculation should also include those shares that are part of a share-lending program provided that those shares have legal recall rights attached to them. Further, the SEC needs to clarify how to determine the total amount of shares outstanding at a listed corporation. We believe that the SEC should adopt an instruction that, for purposes of calculating the total number of outstanding shares, shareholders rely on the number of shares outstanding as disclosed by the company on its most recent proxy statement. We also agree with the SEC’s conclusion that shareholders should be allowed to aggregate their holdings in a corporation in order to meet ownership eligibility requirements, otherwise we believe that many long-term investors like ourselves would be excluded from the process completely.

VI. The argument that directors named by shareholders would be beholden to “special interests” and would upset the dynamic of the board of directors is without merit.

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<sup>2</sup> Letter from Terence M. O’Sullivan to Jonathan G. Katz, US Securities and Exchange Commission app. (Dec. 11, 2003), <http://www.sec.gov/rules/proposed/s71903/s71903-363.pdf>.

Ms. Elizabeth M. Murphy  
August 14, 2009  
Page 5

Corporations have long expressed the idea that if the SEC grants proxy access to shareholders, then special interests will dictate that director's actions on that Board. We find this argument to be specious at best. We believe that the cozy atmosphere of many corporate boardrooms has contributed in part to the current economic crisis in this country. We believe that increased board diversity will be the result of proxy access to shareholders. According to a recent report written for the California Public Employees' Pension Plan (CalPERS) by Vitrom Consulting, "Core business concepts such as competitive advantage, organizational performance, creativity, innovation and shareowner value are the new talking points linked to a diverse state of board of directors."<sup>3</sup> We believe that when shareholders are allowed the ability to nominate individuals to the board, diversity is one of the inevitable results.

VII. We oppose the "first in" standard. We believe the largest beneficial ownership group should take precedence.

Under the Commissions 2003 proposed rules for proxy access, the Commission proposed that, "the largest shareholder or group would have their nominee or nominees included in the company proxy materials..."<sup>4</sup> We believe that this method is superior to the proposed "first in" method as it would focus more on large, long-term shareholders that have more of a stake in the company's long-term performance and health. Further, this method was preferred by the majority of those that commented on the 2003 proposed rules as it provided a clear means by which to determine what group or groups should be granted the ability to have their candidate listed on the company's annual proxy statement.<sup>5</sup>

VIII. The SEC should not extend the comment period for this proposal.

The suggestion made by many in the corporate community that the SEC should extend the comment period for this proposed rule is without merit. Concerned investors have had ample opportunity to present views on this

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<sup>3</sup> Board Diversification Strategy: Realizing Competitive Advantage and Shareowner Value, A whitepaper by Virtcom Consulting on behalf of the California Public Employees' Pension Plan. 2009. <http://www.calpers-governance.org/docs-sof/marketinitiatives/initiatives/board-diversity-white-paper.pdf>

<sup>4</sup> 74 Fed. Reg. at 29,044 n. 106.

<sup>5</sup> Id. at 29,044.

Ms. Elizabeth M. Murphy  
August 14, 2009  
Page 6

proposal. We believe that the SEC should begin crafting and implementing a rule in time for shareholder season 2009/2010.

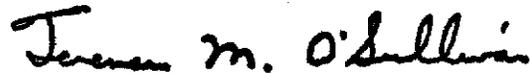
IX. Conclusion

Real representatives of shareholder interests are needed now more than ever. Establishing meaningful proxy access rules would introduce a new perspective onto corporate boards, something that is desperately needed in these times of corporate scandal and ever escalating executive compensation. Thank you in advance for your consideration of our comments.

If you have any questions, please contact the LIUNA Department of Corporate Affairs at (202) 942-2359.

With kind regards, I am

Sincerely yours,

Handwritten signature of Terence M. O'Sullivan in black ink.

TERENCE M. O'SULLIVAN  
General President

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