NBIM
Norges Bank Investment Management

Securities and Exchange Commission
Att: Elizabeth M. Murphy
100 F Street, NE
Washington, DC 20549 – 1090
USA

Date: 17 August 2009

Your ref.:
File number S7-10- 09

Our ref.: akv

Dear Commissioners,

File Number S7-10-09

Norges Bank Investment Management (NBIM) is a separate part of the Norwegian central bank (Norges Bank) and is responsible for investing the international assets of the Norwegian Government Pension Fund. NBIM also manages the major share of Norges Bank's foreign exchange reserves and the Government Petroleum Insurance Fund.

NBIM holds assets in excess of USD 400 bn globally, of which USD 66 bn is invested in approximately 2200 U.S. companies. This equates to an average voting percent of 0.6 percent. We therefore have a strong interest to preserve the best aspects of U.S. corporate governance regulation and we support measures that seek to improve any regulations that do not offer satisfactory shareholder protection.

Summary comments:

- We support the adoption of Rule 14a-11. We consider it meets the Commission's stated objectives and is likely to be an important step to restore investor confidence and add vitality to board elections.

- The proposed Rule 14a-11 should make clear that it establishes only minimum mandatory disclosure obligations on behalf of corporations, but does not prohibit corporations voluntarily providing disclosures of shareholder-nominated candidates beyond the minimum level established by the proposed rule.

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- We see no need for introducing a 'first past the post' rule. A preferable approach is to permit all valid nominations to be placed on the ballot.

- We regard the proposed one percent standard for large accelerated filers to be appropriate.

- Rules regulating the consolidation of the holdings of a proponent coalition should be made easy-to-practice.

Overview

We commend the SEC for proposing a mechanism for improved proxy access. We regard its introduction as a positive step on the path to effective company governance. Improving disclosure requirements and so reducing the costs and complexity of proposing alternative board candidates is necessary to add vitality to board elections.

In evaluating the specific Rule change that is proposed, it is important to assess the degree to which the objective will be reached without unnecessary cost and practical complexity imposed on proponents and companies. Although the intention is not to overflow shareholder meetings with a high number of contested elections, the success of the reform will be judged on whether the usage reaches a frequency that meaningfully increases accountability. We recommend that the SEC, in its final Rule writing, seeks to cut the level and complexity of requirements upon proponents to ensure actual usage. In particular, every effort should be made to eliminate the right for exemptions by way of individual corporation bylaws. Should experience demonstrate a need for additional roadblocks, the SEC will be able to fine-tune rules later.

Our specific areas of recommendation are set out below.

It Should Be Made Clear That Proposed Rule 14a-11 Would Establish Minimum Disclosure Requirements For A Corporation

We consider the proposed Rule 14a-11 essentially as a disclosure rule providing mandatory disclosure by a corporation of candidates nominated by shareholders under certain defined circumstances. To that end, it should be made clear that the disclosures required by the proposed Rule are the absolute minimum. Corporations should be permitted to disclose shareholder-nominated candidates under circumstances that would not meet the requirements for mandatory disclosure under the proposed Rule, but should not be permitted to refuse to disclose such candidates by adopting procedures or bylaws that would impose higher thresholds than those established in the proposed Rule 14a-11.

For example, while the proposed Rule would establish a minimum holding requirement by shareholders to implicate the mandatory disclosure obligations of corporations,

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corporations should be permitted to publish the names of director candidates nominated by shareholders who may not meet these mandatory minimum levels. On the other hand, corporations should not be permitted to 'opt out' of these mandatory disclosure obligations by adopting internal procedures or bylaws that would impose higher threshold requirements. Likewise, the proposed Rule would establish a 'first past the post' rule by which corporations would be required to publish the names of shareholder-nominated candidates based on the order in which they were received. Although, as discussed below, we don't believe such a rule is necessary, we would see nothing inconsistent with the proposed Rule for a corporation to voluntarily publish the names of all shareholder-nominated candidates submitted for consideration, and the proposed Rule should not be interpreted as preventing such a result.

Maximum Number of Shareholder Nominees to be included in Company Proxy Materials

We see no need for introducing a 'first past the post' rule in order to limit the number of candidate proposals. Such a rule may, on the contrary, open up for unintended opportunism or manipulation. A preferable approach is to permit all valid nominations to be placed on the ballot with the nominees, if gaining sufficient support, taking the places representing up to 25% of board positions. We believe the one percent and one year holding rules will provide sufficiently strict filters to avoid excessive candidate proposals.

We regard the 25% ceiling as appropriate. We accept the premise that the proposed Rule should not be intended to facilitate change of control. In principle we have no reservations against shareholders having the full opportunity to materially change the board also through the use of a 'proxy access' mechanism.

Minimum Disclosure Requirements

Disclosure requirements for the proponent should be limited to what is really needed to ensure an orderly market. As the proposed Rule would establish minimum disclosure requirements on behalf of a corporation, corporations should not be permitted to frustrate the purpose of proposed Rule 14a-11 by implementing internal procedures or bylaws that would make the disclosure requirements of the proponent more stringent than those identified in the proposed Rule. The focus should be that disclosures enhance readability and analysis.

Shareholder Nominee Eligibility

We doubt that there is fundamentally a need for a one-year proponent holding requirement, but accept that this proposal is a part of a compromise. We stress, however, that one year must be an absolute maximum, and the holding requirements must not be forward-looking.

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Such tie-in rules will bar participation by many institutional shareholders as they will be unable to guarantee future holding sizes.

With regard to ownership thresholds, we recognise that a tiered approach to ownership thresholds is a practical compromise to avoid the risk of unintended disruption to issuers. We regard the proposed one percent standard for large accelerated filers as appropriate.

Rules regulating the consolidation of the holdings of a proponent coalition should be made easy-to-practice and aim at demonstrating interest in the company rather than producing unnecessary evidence of detailed day-by-day consolidation. For a group of shareholders, establishing a definitive statement of minimum holding on a continuous basis for at least one year may introduce some unanticipated bottlenecks. Adopting a 'points in time' methodology (monthly, or quarterly for example) as a means of determining shareholding thresholds among nominating shareholder groups may overcome this. In any event, written statements between shareholders and custodian banks will be necessary. In such circumstances it is unclear which entity will have authority to collate and issue a written statement on behalf of the group. We invite the SEC to open a dialogue with representative custodian banks to seek an effective solution acceptable to all parties including the companies.

Director Nominee Eligibility

We agree with the Rule as proposed that listing standards should apply to the determination of independence for nominee directors. Applying more stringent independence standards may have the unanticipated consequence of restricting the application of the Rule at certain companies that set unreasonably high independence thresholds.

NBIM believes the application of the "interested person" standard of Section 2(a)(19) of the Investment Company Act with respect to the representation that a shareholder nominee be independent from a company to be unnecessary. We also regard any limitation on affiliation between nominees and nominating shareholders as unnecessary.

We do not see a need to deny nominations based on previous lack of support, and approve the commission's choice of not suggesting such a Rule. Equally, shareholder nominees should not be subject to special requirements. We hold it as unlikely that investors would impose disadvantage to themselves by electing unsuitable directors.

Application of Rule and future challenges

Internet-based and electronic means of communication are now the preferred information channels for practically all shareholders and this fact should guide the application of the new Rule. For instance, additional information, such as information relating to alternative board candidates can now be made available to shareholders electronically at virtually no

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added cost to the company. Consequently, the SEC should consider reducing the threshold cut off deadlines for filings and proposals.

Conclusion

We reiterate our support for the adoption of Rule 14a-11 and encourage its early adoption. We urge the SEC to avoid making any lengthy transition period after the adoption of the new Rule and seek its introduction ahead of the 2010 proxy season. We welcome this opportunity to contribute to the rule making process and NBIM would be pleased to discuss our proposals directly with Commissioners should that be of value for the Commission's considerations.

Yours sincerely,

Anne K. Kvam
Global Head of Corporate Governance

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