I believe that the Commission's proposed rules regarding election of directors should be adopted as a bare minimum requirement to allow owners of a company to exercise control of their company.

I believe that the Commission should keep the following in mind:

1) It is inappropriate to permit brokers to exercise discretionary voting authority for stockholders in that their interests may be, and often are, at variance with those of the corporation's owners. This is particularly true in the case of mutual funds and similar corporations or trusts.

2) Since virtually all corporate elections are unopposed, a minimum requirement should be that a nominee receive a majority of the votes represented at the meeting. It may be more appropriate to require a nominee to receive a majority of all the votes that could be cast.

3) Another method of improving corporate governance would be to require that
(a) there be at least one more nominee than seats open on the board.
(b) It seems clear that if (a) is adopted, there should be a requirement to shift the names on the ballots so that a "straight ticket" voter would not always select the same people.

4) Alternatively, one (or more) positions open on the board could be left open, without a board selected nominee. Anyone who received the most votes from either previously submitted names or write-ins would be elected if that person received more than some threshold number (10%?) of votes present at the meeting.

5) Management should not be allowed to indicate a preference for or against particular candidates on the ballot. We don't permit this in elections for government officials, and there is no reason to permit it in corporate elections.

6) The fact that a person may have run for an office previously and lost should not prejudice a future election. It can take quite a while for a large company to recognize what it should do, and repeated runs may have the practical effect of pushing a company to face up to the real world.

7) The overall process of dealing with corporate secretaries is sufficiently onerous that the Commission need not interpose any additional restrictions or hurdles for candidates for the Board. One can hardly imagine any change in the rules that is likely to thwart a board from perpetuating itself no matter how the rules are changed. The commission need not evaluate hurdles.

8) The Commission might consider a "strict liability" standard that would make individual board members liable for corporate losses up to perhaps three times their total remuneration received or receivable where their action has been particularly incompetent. The corporation should not be permitted to purchase insurance for such losses on behalf of directors nominated by the board.

The discussion about not permitting shareholders to effect a "change in control" illustrates the problems with the Commission and its current governance structure. If a third party is attempting to take over control of a company, little assistance from the Commissions rules is required. If, on the other hand, shareholders believe that the directors are not doing their fiduciary duty and are not running the company for the benefit of the shareholders, then of course the shareholders want and are entitled to a "change in control."

The discussion about not permitting the nomination of a person when the nomination would violate state or federal law, etc. is just plain absurd and
unnecessary. Of course someone who is not legally permitted to hold an
office can not hold the office. It almost appears that someone receives a commission on the ink used to print the Federal Register! And the concern that a nominee not be an "interested person" is likewise unreasonable. An "interested person" is most likely to understand polices that need to be changed and if such a person is willing to risk a career, what is wrong with such a person running for a seat on the board?

An additional issue that the Commission raises is the relationship of a potential nominee to a group of investors. The discussion suggests that
would be a bad thing. In fact, the opposite is likely to be the case. Suppose that a group of state pension funds wants to nominate an employee of one of the funds as a director. Isn't such a person as likely or more likely than an other candidate to function in the interests of all shareholders?

Your concern about the possible number of shareholder nominations appears to be misplaced, but if you feel that a limit is necessary, then I propose that it should be twice the number of directors to be elected.

I think that a fair summary of your discussion is that you are attempting to provide the appearance of greater shareholder access while insuring that entrenched management is not removed.

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Eugene Falik
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