

January 18, 2010

Ms. Elizabeth M. Murphy
Secretary
SEC
100 F St., NE
Washington, DC 20549-1090

Re: Facilitating Director Nominations (S7-10-09)

Dear Ms. Murphy, Commissioners, and staff,

I am pleased you re-opened the public comment period on the proxy changes proposed in June 2009. I favor reforms that would go a tad further than these rules in allowing shareholders greater ability to nominate directors, but believe the proposed rules are fair and should be enacted in their proposed form.

I oppose the "opt-out" provision advocated by some because it will encourage corporations most in need of competitive board elections to resist change, thwart efforts by shareholders to improve the financial performance of under performing firms, and may encourage poor communication between boards and shareholders. Another reason we need a uniform access rule is that an "opt-out" provision could encourage corporations to incorporate in states that limit stockholder participation. A uniform access proposal rule (14a-11) would create an equal playing field for all stockholders.

In the vast majority of cases shareholder nominations will not lead to less qualified board of directors. Organizations that espouse this speculative theory insult the intelligence of individual investors and institutional investors, both of whom have a lot of money at stake in the public market. Many corporate managers take actions to achieve short term gains at the expense of long term, sustainable growth. The shareholders that are most active in corporate governance issues, and would likely field the most numerous candidates to run for board positions, have longer investment horizons than most corporate managers.

The argument that the politics surrounding competitive board elections will deter qualified and experienced individuals also lacks merit. Almost all expansions in democracy have brought better qualified leadership, and in this case competitive elections will bring a diversity of views that would enhance boards' decision-making ability and its oversight of corporate managers. One may recall that a number of shareholders had tried to oust some directors at Washington Mutual and also challenged the decision-making of corporate directors at a number of other corporations that no longer exist (Bear Stearns, Countrywide, and Wachovia). While permitting shareholders to nominate directors will not solve all problems of corporate governance, it is an improvement over the current situation that exists in many public companies, where corporate managers and their chosen directors dominate corporate governance.

Sincerely,

Phil Nicholas
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Union College

The views expressed in this comment letter are my own and do not represent those of Union College.