



IRONFIRE CAPITAL

July 30, 2010

VIA E-MAIL

Ms. Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.; Room 10900  
Washington, D.C. 20549

*Re: Release Nos. 34-62495; IA-3052; IC-29340; File No. S7-14-10  
Concept Release on the U.S. Proxy System*

Dear Ms. Murphy:

This is a letter to provide comments to the Commission on its concept release on the U.S. Proxy System. I also provided comments last year on the issue of proxy access located here: <http://www.scribd.com/doc/17263947/Ironfire-Proxy-Access-Comment-to-the-SEC>.

Amid all the policy changes being discussed by the Commission at the moment, I feel none is as important as the issue of proxy access.

Proxy access will allow shareholders in public companies to nominate directors to be included in the company's official proxy statement - the list of nominees to the board of directors, on which shareholders vote at the annual meeting.

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For example, Citigroup has 15 directors currently. They will likely nominate the same 15 people for re-election at next year's annual shareholder meeting. If there are no other candidates, the shareholders will usually re-elect the slate of people put in front of them by an overwhelming margin (90-95% is common).

Under the current system, if shareholders are angry at Citigroup or, for example, Yahoo!, as they were in 2008 after Yahoo!'s turned up its nose at Microsoft's offer to buy the company, there are only two things they can do: (1) vote against the re-election of the company's directors (individually or collectively), or (2) pay out of their own pockets to launch a full-blown proxy contest.

The problem with voting against directors is that it's largely symbolic. In the case of Yahoo! in 2008, 30-35% of shareholders voted against the re-election of former CEO Jerry Yang, Chairman Roy Bostock and others -- but nothing happened. Bostock is still Chairman, and the company's stock price is currently 57% below Microsoft's buyout offer and 30% below where it was at the 2008 shareholders' meeting.

The problem for dissatisfied shareholders with mounting a proxy contest is that it's very expensive. By running such a contest, you are coming up with your own alternative list of nominees to send to all shareholders (in addition to the official company proxy they receive). Then, you have to try to convince other shareholders to vote for your proxy rather than the company's. After mailing costs, lawyer and proxy-solicitor fees, you are looking at a minimum of \$1 million in fees, and probably much more if you're going to go after a Yahoo!- or Citi-sized company. Therefore, this option is really only attractive to wealthy, activist-minded shareholders, such as Carl Icahn, who decided to go after Yahoo! in 2008 and later struck a deal with the company to get a few seats on the board. (He later chose to resign from the board and sell all his shares.)

Proxy access would provide an alternative. With proxy access, a Citi shareholder could ask the company - in addition to its 15 candidates for re-election to the board - to include one or two more candidates. So, the official proxy would go out with, say, 17 candidates for 15 seats. Shareholders could look at the biographies of all candidates and choose the 15 they think best suited to representing their interests. The 15 with the most votes would serve.

The reason this seemingly technical policy change is so important is that it's about choice (or competition, if you prefer). The principle of proxy access is

"may the best man or woman win," not a vote by acclamation. If you believe that a free market system for business is the most efficient way to run an economy, because inefficient companies will fail and the most responsive to customers will prosper, then I can't see how you wouldn't favor a little competition for available director positions (as representatives of the shareholders), to ensure that management is making its best efforts to drive value for those who own the company.

Of course to date, management and boards have had a good thing going, having a closed system with high barriers to entry stacked in their favor. Management has had the ability to select the directors who monitor them. The odds of shareholders fighting for seats on a board currently are small. So, it's fairly unsurprising that many executives are fighting to keep the current system in place (through lobbyists at organizations such as the Business Roundtable and the U.S. Chamber of Commerce).

(Incidentally, I'm not sure if you noticed the high number of "form letters" submitted to the Commission last year from very small mom-and-pop business across America who spoke out – in almost exactly the same language – against proxy access. I called a couple directly to ask them about their positions and they abruptly hung up the phone and didn't want to speak to me. It makes you wonder if their letters were somehow orchestrated behind the scenes by an anti-proxy access lobbyist group to make it appear that this policy was going to somehow hurt Main Street. I hope the Commission will check into the veracity of such letters.)

The arguments against proxy access generally tend to suggest that shareholders aren't as smart as management and that the shareholding public will nominate dumb, frivolous, or special-interest-driven (e.g., pro-environment or pro-labor) directors. Yet, they are missing the most important point: it's the shareholders who ultimately give the thumbs up or thumbs down to any potential director. A nomination does not an election make.

There were once people who argued that women were not smart enough to get the right to vote. We know now how silly that argument was.

Name me one political or military leader in history who willingly gave up power. I understand why management is lobbying hard to keep control of the current system.

I'm disappointed that some who support proxy access wish to limit the right to nominate potential directors to only shareholders of a certain bloc size, held for a certain amount of time.

Some pro-management Senators had been pushing for criteria of shareholders needing to own 5% of the company for at least three continuous years to be allowed to nominate additional directors. In my view, that's absurd. Take Citi again. At the moment, no shareholder would meet these criteria. The largest shareholder (as of the last quarterly filing) was BlackRock, with a 3.1% stake.

I strongly believe that there should be no stake size or time limitations. What is management afraid of? What is the risk? Let the shareholders look over the list – however long – and decide for themselves. How do we know that a small shareholder might not put forward a fantastic director for possible election?

Open proxy access, as a rule, will necessitate the large institutional investors and pension funds to read the proxies and make a selection they can justify to their stakeholders in future. That's accountability and transparency, and they'll have to spend some more money to do it. In my view, that will ultimately make our capital markets much stronger and more resilient to future shocks and potential downturns.

Proxy access gets to the heart of company-level accountability. Frankly, proxy access will help the SEC better do its job of overseeing risky behavior at companies. Think of it as an extension of your Enforcement Division. It could also be thought of as a new Prevention Division for the Commission.

Of course, I expect most large shareholders will free-ride and vote for whomever the large proxy advisory firms, like RiskMetrics, Glass Lewis and Proxy Governance, recommend. I'm okay with that kind of free-riding. At least the analysts at those three firms will have read the backgrounds of all the director candidates and made an educated recommendation that's not beholden to management.

If proxy access happens -- in a pure, unfettered, non-watered-down form - I would expect to never again to see the likes of a 71-year-old Broadway producer (Richard Berlind) on the board and Risk Committee of Lehman Brothers, or OJ Simpson on the board and Audit Committee of Infinity Broadcasting.

To all the esteemed Commissioners, I say: tear down that wall protecting crony capitalists, and support the shareholders' suffrage movement.

Sincerely,

/Eric M. Jackson/

Eric M. Jackson, Ph.D.  
Managing Member  
Ironfire Capital LLC

cc: The Honorable Mary L. Schapiro, Chairman  
The Honorable Kathleen L. Casey, Commissioner  
The Honorable Elisse B. Walter, Commissioner  
The Honorable Luis A. Aguilar, Commissioner  
The Honorable Troy A. Paredes, Commissioner  
Ms. Meredith B. Cross, Director, Division of Corporation Finance  
Mr. David M. Becker, General Counsel and Senior Policy Director