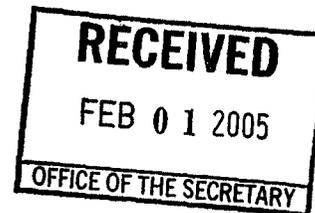


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February 1, 2005

4-493



Hon. William H. Donaldson, Chairman
Hon. Paul S. Atkins, Commissioner
Hon. Roel C. Campos, Commissioner
Hon. Cynthia A. Glassman, Commissioner
Hon. Harvey J. Goldschmid, Commissioner

U.S. Securities & Exchange Commission
450 Fifth Street N.W.
Washington, DC 20549

Dear Honorable Commissioner:

This letter is a respectful request that the Commission consider major changes in how public companies communicate with their street-name shareholders (shareholders who hold their shares in brokerage or bank nominee accounts, as opposed to Shareholders of Record, or "registered" shareholders).

By way of background, Shareholder.com was founded in 1992 as a technology-based shareholder communications firm providing services to publicly traded companies. We currently have over 800 client companies ranging from megacaps with over \$300 billion in market capitalization to recent IPOs. After discussions with many of these client companies, I can confidently state that nearly every company we represent would like to see major changes in how they identify and communicate with their street-name shareholders.

Today, more than three-quarters of all public company shares are held in street-name. These shares are held as a matter of record by brokers and banks through their depositories. Since the majority of shares are held confidentially (as "Objecting Beneficial Owners" or OBOs), the actual shareholder base for most companies is largely a mystery. The SEC 13-f filings only provide information as to institutional shareholders who manage over \$100 million in assets. These filings are made on a quarterly basis and are not due until 45 days after the end of each calendar quarter rendering the information they provide quite stale. Furthermore, today's high level of turnover in many portfolios renders much 13-f data meaningless. For shareholders other than 13-f filers, ownership data is nearly impossible to obtain.

This artificial wall dividing companies and their shareholders causes serious problems for both companies and shareholders, specifically:

- Today's increasingly transparent shareholder communications require that public companies be able to quickly and efficiently communicate with all shareholders. Conversely, increasing levels of shareholder activism is generating a healthy flow of ideas and/or shareholder proposals back to the company. This increased communication – in both directions – requires that public companies *know in a timely fashion who all their current shareholders are*, not just a minority of registered shareholders.

- Since nature, and business, abhors a vacuum, the need for public companies to understand who all their shareholders actually are has spawned the development of "stock surveillance" services. These services are expensive, imprecise and historically prone to corruption. For many companies stock surveillance is a major expense, often consuming up to forty percent of their annual investor relations budget, second only to annual meeting-related expenses. Furthermore, stock surveillance has had a corrosive effect on the ethics of our industry resulting in a number of Federal investigations, including the current Commission investigation.
- The current system for tabulating proxy votes of street-name shareholders is opaque and virtually un-auditable. Street-name shareholders are not provided the same proxy materials as registered shareholders, but rather receive a generic "Voting Instruction Form" from their broker or banker generated by ADP (Automatic Data Processing, Inc.). Companies cannot directly confirm that this information is being distributed correctly and on time or that the votes are even being properly tabulated. This is in sharp contrast to the scrutiny focused on the designated "Inspector of Election" sworn to accurately audit votes cast by registered shareholders.
- Finally, the cost of distributing information and tabulating proxy votes for street-name shareholders is much higher than necessary. These services are provided almost exclusively by ADP acting as the agent for brokers and bankers. Since public companies are constrained to use only ADP there is no opportunity to reduce costs or improve services through competitive bidding. As a consequence, most companies only communicate directly with their street-name shareholders when required by law.

From the perspective of our public company clients, the solution to these problems is straightforward. Companies simply need to know who all their shareholders are, when shareholders buy and sell shares, and how they can communicate with all shareholders. Today, this information is available on a trading basis through the Depository Trust & Clearing Corporation ("DTCC") and its subsidiaries, and on a consolidated basis through ADP. On behalf of the companies we serve, Shareholder.com urges the Commission to revamp the industry's approach to shareholder identification and communication. This can be accomplished through the following four steps:

1. Provide public companies transparent access to the DTCC settlement database on a T+3 basis by providing the identity of actual shareholders rather than opaque account numbers. Such access would be provided to companies confidentially, thereby protecting the privacy of institutions executing trades-in-progress for large blocks of shares.
2. Require that institutional investors electronically submit their 13-f filings on a monthly basis within five business days of the close of the month.
3. Allow ADP, and other agents consolidating street-name shareholders, to provide public companies with listings of all their street-name shareholders in a timely and cost-effective manner.
4. Allow public companies, through an open and competitive process, to select those firms that they wish to provide shareholder communication, mailing and voting services.

From a technical perspective, today's technology makes these four simple steps highly practical.

From a regulatory perspective, implementing these changes would allow public companies to be more responsive and attuned to their entire shareholder base. It would also make it possible for investors to become more informed about the institutional ownership trends for the companies they own, balanced, of course, by the needs of institutional investors to keep trades-in-progress confidential until their completion.

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From an ethical perspective, opening the shareholder base to public companies would allow the surveillance industry to focus on the constructive analysis and interpretation of shareholder activity rather than practices that have resulted in multiple Federal investigations over the years.

From an economic perspective, these changes would significantly reduce costs associated with shareholder communication. These cost reductions would partially off-set the costs associated with Reg FD and Sarbanes-Oxley compliance. This would be particularly welcomed by small companies that today cannot afford expensive surveillance services and consequently have no idea as to their share ownership.

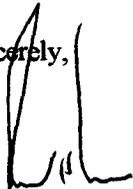
Most importantly, these changes would encourage more frequent dialogue between public companies and the shareholders who own them.

These ideas are not new. Over the years I have had many conversations with newly-appointed investor relations managers who are confounded by the Byzantine relationship public companies are required to manage with their street-name shareholders. Many proposals for correcting these problems have been made by different parties including trade organizations such as the Society of Corporate Secretaries & Governance Professionals (formerly the American Society of Corporate Secretaries), the Corporate Transfer Agents Association and The Business Roundtable; by ad-hoc committees of the New York Stock Exchange; by stock transfer agents and their client companies including Manufacturers Hanover Trust Company, Computershare, Agilent, Intel and Microsoft; by members of the investment community including CALPERS; and by industry professionals including Carl T. Hagberg and Associates. Their proposals have documented the issues in much more detail than possible in my letter. Attached is a list of supporting documents for your reference.

Honorable Commissioners, over the last five years there has been tremendous improvement in the transparency and accountability to which public companies are held. These improvements are largely a result of leadership the Commission and Congress have provided through Regulation FD and Sarbanes-Oxley legislation. Public companies need the same transparency and accountability with respect to all their shareholders.

As an advocate for our client companies, we ask that the Commission provide the leadership necessary to correct this situation. I personally, and I am sure many executives from our client companies, would be delighted to help in any way possible. I will contact Mr. Katz in a few days to see if we can arrange a meeting at your convenience. Thank you for your consideration.

Sincerely,



Ronald H. Gruner
President, Shareholder.com

attachment: Supporting Documents
cc: Mr. Jonathan G. Katz, Secretary

Supporting Documents

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