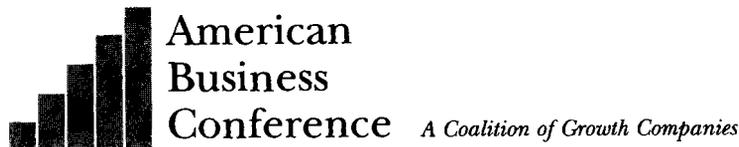


John Endean *President*



VIA Courier

July 19, 2004

Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, NW
Washington, D.C. 20549-0609

Re: Rule No. 4-493, Business Roundtable Petition for Rulemaking Regarding Shareholder Communications

Dear Mr. Katz:

The American Business Conference (ABC) is a coalition of CEOs of midsize growth companies founded in 1981 by Arthur Levitt Jr. ABC's current chairman is Alfred West, CEO of SEI Investments, Oaks, Pennsylvania.

We are writing to comment on the Business Roundtable Petition for Rulemaking Regarding Shareholder Communications ("the BRT Petition"), submitted to the SEC on April 12, 2004.¹ We note that two other organizations, Georgeson Shareholder Communications, Inc., and the American Society of Corporate Secretaries, have filed letters with the Commission in support of the BRT Petition.²

ABC's interest in these letters stems in part from our decision, several years ago, to merge with the Association of Publicly Traded Companies (APTC), a business group that had a long and distinguished record working with the Commission and other groups on the very issues raised in the BRT Petition.

¹ Request for Rulemaking Regarding Shareholder Communications, No. 4-493 (April 12, 2004).

² There are two Georgeson letters to the Commission of relevance to the BRT Petition. One is a comment letter on the Petition itself, filed on May 3, 2004 by John C. Wilcox. Additionally, Mr. Wilcox, for Georgeson, filed a comment letter on SEC file No. S7-19-03 on Security Holder Director Nominations. This letter is dated April 12, 2004 and recommended the "same reforms proposed in the BRT petition" which was filed on the same day. The ACSC comment letter on the BRT Petition, by Mr. David Williamson Smith, was filed on April 30, 2004.

Overview

The BRT Petition calls upon the Commission to “conduct a thorough review of the current shareholder communications system.” This implies a sweeping, open review of all aspects of shareholder communications.

In fact, however, the BRT Petition focuses only on the process by which shares held in beneficial form are voted at annual meetings. In effect, the BRT Petition is requesting the SEC to review the beneficial shareholder proxy process system and remake it into a system that is very similar to the current process by which issuers obtain proxies from registered shareholders.

This concerns us. Previous efforts to remake the beneficial proxy process have been motivated by, or at least have provided an opportunity for, larger companies to shift some of the cost of the beneficial proxy process onto smaller public companies. We are also disturbed at the apparent willingness of the BRT to abandon the rule by which uninstructed proxies are voted by the brokers representing those shares, the so-called “10-day rule.” ABC supports the retention of the 10-day rule with certain modifications we have proposed elsewhere.³

Our main objection to the BRT petition, however, stems from our view that the current system for dealing with beneficial shareholder voting works remarkably well for the vast majority of the 14,000 publicly traded companies and their myriad individual and institutional shareholders.

Accordingly, ABC believes that the BRT’s focus on beneficial ownership is misguided. As discussed below and contrary to the BRT Petition, the beneficial side has been reviewed repeatedly and minutely in recent years by all manner of experts and stakeholders in the proxy process. Under the circumstances, there is no reason to revisit the issue.

There is no demonstrable need for the SEC to review the beneficial shareowner proxy voting process.

The underlying contention of the BRT Petition is that the proxy voting process for the beneficial side of the proxy process has gone unexamined by the Commission for decades and has become, because of this neglect, costly, cumbersome, rife with “ongoing problems,” and technologically backward. The contention is absurd and easily refuted.

³ See, e.g., Letter of John Endean to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission re Release No. 34-466620; File No. SR-NYSE-2002-46, October 31, 2002.

The Petition states: “[t]he Commission developed the current system in the 1980s. During the ensuing 20 years, companies needs to communicate with shareholders has grown, and technological advances have made direct communication far more feasible.”⁴ “The Commission last considered (and rejected) [direct proxy process communication] in 1982.”⁵

Georgeson’s April 12 letter states: “the system is 70 years old...The proxy rules have not kept up with the fundamental changes in the stock market and the shareholder population.”⁶

These statements artfully imply that the proxy process has gone unchanged and unexamined since the 1980s. This is incorrect with regard to the beneficial side of the proxy process.

Contrary to the contention of the BRT Petition and the Georgeson and ASCS letters, the beneficial side of the proxy process has been examined recently, repeatedly, and thoroughly. Parties with an intense interest in the process have addressed all the issues raised in the BRT Petition through work on at least three formal committees convened by the New York Stock Exchange (NYSE) or by the constituents themselves, with SEC staff encouragement and active participation. It may be that the BRT, Georgeson, and the ASCS remain troubled by the conclusions resulting from these reviews, but nothing is to be gained, and much credibility is lost, by implying that the reviews did not occur. In this sense, the BRT Petition is frivolous.

New York Stock Exchange (NYSE) Committees 1995 – 1997.

Beginning in 1995, the NYSE Proxy Fee Committee -- a group organized in response to a letter from the Corporate Transfer Association (“CTA”) to then-NYSE Chairman William Donaldson -- reviewed the proxy fee structure. The Committee’s early participants were NYSE-listed issuer representatives from the CTA and the ASCS.

In December 1996, in response to concerns of issuers regarding the cost and efficiency of the beneficial side of the proxy process, the NYSE proposed a new proxy reimbursement fee structure aimed at providing “incentives for nominees and intermediaries to use the most current and efficient technology...[and for] market driven innovations, such as electronic proxy services, touch tone voting, and electronic vote reporting.”⁷ This new fee proposal struck a rough balance of cost burdens between larger and smaller issuers. This balance was achieved, however, only because of SEC concerns with smaller issuer impacts and the APTC’s efforts to persuade the NYSE to substantially revise an earlier fee structure -- supported by the largest NYSE-listed companies -- that would have dramatically cut large issuer costs and increased the cost to all other issuers. The SEC approved the balanced

⁴ BRT Petition, p. 2. (Page numbers are based on the 18 page document which prints from the SEC website.)

⁵ BRT Petition, pp. 14 – 15.

⁶ John Wilcox to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, re: SEC file No. S7-19-03, April 12, 2004, p. 1.

⁷ Notice of Proposed Rule Change by the NYSE Relating to Transmission of Proxy and Other Shareholder Communication Material, Exchange Act Release No. 34-38058, 61 Federal Register 68082, 68083 (December 26, 1996).

incentive-based fee structure on a pilot basis, which allowed for annual revision of the fees.⁸ This pilot fee structure launched a multi-year examination of the proxy process and additional amendments to the NYSE rules, each of which was submitted to and approved by the SEC after extensive notice and comment.

In 1997, the NYSE formed a much larger and more diverse committee. Its members included representatives of all proxy process participants. This group, called the “NYSE Committee,” included representatives of the securities industry, institutional investors, and large and, importantly, midsize and small issuers. Members of the SEC Division of Corporation Finance staff often attended these meetings.

Through its numerous meetings over the course of 1997, the NYSE Committee reviewed extensive analyses of proxy fees and the results of surveys of issuers. It also engaged in prolonged negotiations involving all parties over issues of cost and service levels. At the end of this process, the NYSE Committee offered its support for further amendment to the NYSE Rules on proxy fee reimbursement and continued improvement in the beneficial proxy process.

During the NYSE Committee meetings, there was much discussion of whether it would be desirable for issuers to have more control over the beneficial proxy voting process, through either in-house processing or contracting directly with an intermediary. Committee members came to understand the difficulties that these approaches would present to both issuers and shareholders. As part of this discussion, the Committee addressed the possibility of fostering competition in the proxy processing intermediary business. The Committee concluded that this was not a practical alternative. In its SEC rule filing, the NYSE stated, “. . . the Exchange believes that experience indicates that the proxy communication process benefits from the economies of scale and uniform procedures that arise when most mailings are coordinated through a single entity.”⁹

Proxy Voting Review Committee 2001.

Another significant review of the proxy process took place *in 2001* at the suggestion of then-SEC Division of Corporation Finance Director David Martin. This group, the Proxy Voting Review Committee (“PVRC”), while independent of the NYSE and the SEC, was guided by Mr. Martin in terms of its membership, scope and procedures. Like the NYSE Committee, the PVRC included representatives of every proxy process constituency: large, midsize, and small issuers, institutional investors, intermediaries and brokers. The majority of the

⁸ Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change Relating to a One-Year Pilot Program for Transmission of Proxy and Other Shareholder Communication Material, Exchange Act Release No. 34-38406, 62 Federal Register 13922, 13924 (March 24, 1997).

⁹ Self-Regulatory Organizations: Notice of Filing of Proposed Rule Change by the NYSE, Relating to the Reimbursement of Member Organizations for Costs Incurred in the Transmission of Proxy and Other Shareholder Communication Material, Release No. 34-39774; File No. SR-NYSE-98-05, 63 Federal Register 14745, 14746 (March 26, 1998).

members were individuals with long experience with shareholder communications and the annual meeting process.

SEC staff members -- including at various times Mr. Martin and Elizabeth Murphy, of the Corporation Finance Division and Belinda Blaine, Sharon Lawson, Kelly Riley and Sapna Patel, from Market Regulation -- attended the Committee meetings. Both Mr. Martin and Ms. Blaine attended the PVRC's first meeting and expressed optimism that the Committee would provide the SEC staff with valuable information.¹⁰

With its bylaws specifying that it would monitor the "proxy voting process for beneficial shareholders of actively traded public companies," the PVRC undertook a broader review than the NYSE Committee, focusing not only on whether the reimbursement fee structure was appropriate, but also on whether the entire beneficial proxy voting process served the interests of all constituencies.

The PVRC reviewed proposals for direct issuer communication, as well as other alternatives to the existing system. Over the course of 2001, the Committee addressed the question of how well the current proxy voting system met the needs of all constituents, as well as the fairness and appropriateness of the proxy reimbursement fee structure.

The PVRC met eight times in 2001.¹¹ As the minutes show, each daylong meeting involved review of substantial amounts of data regarding the effectiveness of the proxy process and the degree to which the NYSE's incentive-based reimbursement fees were reducing costs for issuers.¹² The Committee concluded that the cost to the issuers was coming down, while voting accuracy and reliability were "near flawless" because of the implementation of the very technological changes that the new fee structure was intended to promote.

The committee also had extensive discussion and debate on a variety of alternative approaches to the current system of beneficial shareholder proxy voting.¹³ At the PVRC's July 31 and August 29 meetings, for example, ASCS president David Smith proposed allowing issuers to assume direct control of the beneficial proxy voting process.¹⁴

The 2001 ASCS proposal was alike in concept to the one outlined in the BRT Petition. It would have placed the cost of the beneficial proxy process on the party that communicated with the shareholder. If brokers or banks did not want to bear the cost, they could opt out by providing the issuer with shareholder contact information. The impact of the proposal

¹⁰ *Executive Summary of the Proxy Voting Review Committee*, Submitted to Ms. Sharon Lawson, Senior Special Counsel, Office of Market Supervision, SEC Division of Market Regulation, by Richard H. Koppes, Facilitator & Secretary, PVRC, February 28, 2002, ("PVRC Summary"), p. 4.

¹¹ PVRC Summary, p. 1.

¹² See, e.g., Minutes of June 13, 2001, Minutes of July 31, 2001, Minutes of October 17, 2001 and Minutes of November 1, 2001, PVRC Summary, pp. 7-10, 12-13

¹³ See, e.g., Minutes of July 10, 2001, Minutes of July 31, 2001, and Minutes of August 29, 2001, PVRC Summary, pp. 7-12.

¹⁴ Minutes of July 31, 2001, Minutes of August 29, 2001, PVRC Summary at 10-11.

would certainly have been to cause brokers and banks to step out of the process, turning it over to the issuers. In other words, like the BRT Petition, the ASCS proposal envisioned a beneficial-side proxy process that would have mirrored the registered side.

The PVRC discussed the proposal at length, reviewing its positive and negative potential for each proxy process constituency. Mr. Smith ultimately withdrew the proposal despite support from some issuers, because of concerns of other constituents at the table.

Most notable was the opposition of institutional shareholder representatives. Representatives of TIAA-CREF and the Council of Institutional Investors (“CII”) stated, on behalf of their organizations, “as well as a number of public pension funds and Taft-Hartley funds,” their opposition to the ASCS proposal. Gordon Garney, for CII, specifically referred to a concern that the ASCS proposal would compromise the confidentiality of shareholder voting and “tilt the voting process to favor corporate management” if nominees turned the proxy process over to issuers. In addition, PVRC Member Donald Kittell, representing the Securities Industry Association (“SIA”) presented a detailed basis for SIA’s opposition to changing the “single utility” approach to beneficial voting and emphasized that “the concern for confidentiality by broker dealers is a very real issue for [SIA].”¹⁵

Concluding the discussion, PVRC Chairman Steve Norman, of American Express, said that the PVRC did not want to weaken or politicize the “finest proxy system in the world,” and that the “integrity, efficiency, fairness, audit ability [sic] and reliability of the U.S. proxy system must be maintained.”¹⁶

Nothing that we know of has occurred over the last three years to challenge the PVRC’s conclusions or counter Mr. Norman’s view of the proxy system.

In summary: there is no basis for asserting that the proxy process had been neglected either by the Commission, the NYSE or any other relevant party over any recent period of time. There is no foundation to the assertion that the beneficial side of the proxy process has been technologically backward or that costs associated with it have been excessive. Indeed, through a process of continuous improvement, the opposite has proved to be true. As for the notion that the beneficial side of the proxy process ought to be jettisoned in favor of the alleged benefits of the registered side, that too was considered and rejected. Indeed, over the last ten years, every aspect of the beneficial proxy voting process has been examined and discussed in excruciating detail.

Neither the BRT Petition, nor the supporting letters of Georgeson and the ASCS raise any issues that would be new to anyone involved in the various proxy process reviews over the past ten years. Under these circumstances, we find it inexplicable that the Business

¹⁵ PVRC Summary, pp. 10 – 11.

¹⁶ PVRC Summary, p. 11.

Roundtable, Georgeson, and the ASCS would ask an overburdened Commission to embark on a forced march down such well-trodden paths. The BRT Petition should be denied.

Sincerely,



John Endean
President

cc: Honorable William Donaldson, Chairman, U.S. Securities and Exchange
Commission
Honorable Paul S. Atkins, Commissioner
Honorable Roel C. Campos, Commissioner
Honorable Cynthia A. Glassman, Commissioner
Honorable Harvey J. Goldschmid, Commissioner
Giovanni P. Prezioso, General Counsel
Alan L. Beller, Director, Division of Corporation Finance
Annette L. Nazareth, Director, Division of Market Regulation