

American Federation of Labor and Congress of Industrial Organizations

4-493-12



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October 24, 2005

Jonathan Katz, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549



Re: SEC File Number 4-493
Petition for Rulemaking on Shareholder Communications

Dear Mr. Katz:

On behalf of the American Federation of Labor and Congress of Industrial Organizations, I am writing to comment on the Business Roundtable's petition for rulemaking on shareholder communications (the "BRT Proposal"). If implemented, the BRT Proposal will increase costs for both issuers and shareholders, and will also give issuers near-exclusive control over communications between shareholders. While any communications system should be periodically reviewed to ensure that it meets the evolving needs of shareholders and issuers, the BRT Proposal will reduce shareholders' ability to hold corporate management accountable. For these reasons, the BRT Proposal should not be the basis for any Securities and Exchange Commission or Self-Regulatory Organization action.

Union sponsored pension plans hold approximately \$400 billion in total assets, and are beneficial shareholders of corporate issuers through banks, brokers, and other custodians. Union members participate in benefit plans with over \$5 trillion in assets, and union members also participate in the capital markets as individual investors. Shareholder communications play an important role in proxy voting decisions made by these pension funds and their designated agents. The voting rights attached to company stock are plan assets that must be managed according to fiduciary standards.

The BRT Proposal argues that the current shareholder communications process is antiquated, and that corporate issuers should be responsible for maintaining lists of their beneficial shareholders. Under the current shareholder communications rules, banks and brokers are responsible for distributing shareholder communications to their clients who are the beneficial shareholders. Most banks and brokers have outsourced the mechanics to ADP Investor Communication Services. The Business Roundtable wants a proxy process that gives corporate issuers control over how proxies are distributed to street-side investors and the tabulation of all votes. Under the BRT Proposal, issuers would instead use transfer agents' registered shareholder servicing systems to process street shares.

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The BRT Proposal Will Undermine Shareholder Democracy

The BRT Proposal will have a chilling effect on shareholders' ability to communicate with their fellow shareholders. Shareholder-to-shareholder communications are an inherent part of proxy contests, vote-no campaigns, and soliciting support for shareholder proposals. Under the present system, many institutional investors use ADP to share their views regarding corporate elections with their fellow shareholders. As a result of the impartial role that ADP plays in the shareholder communication process, shareholders are able to communicate with each other without raising privacy issues or engaging in costly and divisive litigation with issuers.

Under the BRT Proposal, shareholders will have to rely on the courts to enforce their rights under state law to access issuer maintained shareholder lists to communicate with street-side investors. Shareholders would face the same delays and difficulties of communicating with beneficial shareholders that they currently face in obtaining an issuer's registered shareholder list. The costs of hiring legal counsel in an issuer's state of incorporation will be a significant deterrent to shareholders. Using the resources of the corporate treasury, company insiders will be tempted to raise frivolous legal objections to silence dissenting shareholders.

The BRT Proposal would also eliminate ADP as a neutral third-party tabulator of beneficial shareholders' voting instructions. Instead, corporate issuers would be responsible for aggregating the votes of beneficial holders, thereby reducing voting process transparency and increasing the risk of election tampering by insiders. At present, ADP tabulates the voting instructions of beneficial shareholders and transmits these proxy votes to companies. In a contested election, this information is also provided to shareholders who use ADP for shareholder communications, thereby providing an additional check on the ability of company insiders to fraudulently alter election results.

It is notable that the BRT Proposal makes no mention of the rights of shareholders to communicate with each other. Instead, the Business Roundtable envisions a world where issuers are the sole disseminator of shareholder communications. The Business Roundtable separately publishes "Guidelines for Shareholder-Director Communications." These guidelines do not mention communications between shareholders and the fundamental role they play in the democratic process. Instead, the Business Roundtable makes recommendations such as "shareholder communications should be clear and candid," and "directors should attend annual meetings."

The BRT Proposal Will Increase Costs For Shareholders and Issuers

The BRT Proposal will result in increased costs for all market participants. Large and small issuers will likely see an increase in the costs of shareholder communication under the BRT Proposal. The fees that ADP charges on behalf of nominees are regulated by the New York Stock Exchange and are subject to approval by the SEC. The BRT Proposal would replace this regulated system of shareholder communication to beneficial holders with a patchwork of

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practices that could vary from issuer to issuer. The efficiency of many services currently provided by ADP for e-delivery, voting, and compliance would be diminished if issuers were to determine how they wanted to send proxy materials and process votes.

Without a standard proxy voting system for beneficial shareholders, the costs associated with proxy voting will be dramatically higher. Every year, institutional investors cast tens of thousands of votes at thousands of annual shareholder meetings. Under the current system for tabulating votes by beneficial shareholders, proxy voting is standardized and simplified. Using ADP, beneficial shareholders transmit their voting instructions by mail, telephone or via the Internet using one consistent and familiar process. Through ADP's ProxyEdge service, institutional investors may also electronically vote using one secure system.

The BRT Proposal will encroach on the privacy of beneficial shareholders, and thereby expose them to potentially unwanted proxy solicitation efforts by telephone and other means. Under the current system, most beneficial shareholders prefer to remain anonymous (as Objecting Beneficial Owners) from corporate issuers and their proxy solicitors, as well as shareholder groups. The BRT Proposal suggests that shareholder information (names, addresses, share holdings) be made available to issuers, issuers' agents (transfer agents, solicitors, third-party mail houses), and other investors. Issuer-maintained shareholder lists would in effect become public information, potentially making public an investor's portfolio strategy. Investors wishing to maintain their anonymity would be required to pay for the privilege.

The BRT Proposal suggests that technological advances have made the current system of shareholder communications obsolete. To the contrary, the present system makes extensive use of information technology to speed communications. Through ADP, issuers can reach a majority of shares within 24 hours. Moreover, electronic communications such as email and the Internet can be unreliable. According to the *Wall Street Journal*, 35% to 40% of email lists go bad every year because of user's changing email accounts (*Switching Your Email Account*, 9/22/05). Internet-based communications also have an increased risk of fraud, and discriminate against shareholders who do not use the Internet. For these reasons, electronic communications should supplement, but not replace the current shareholder communications framework.

Conclusion: Shareholder Concerns Must Take Precedence

Any changes to the shareholder communications rules must carefully consider the impact on all market participants, and not just corporate issuers. The BRT Proposal is backed by a variety of organizations that have traditionally represented the interests of corporate insiders, including the National Institute of Investor Relations, the Society of Corporate Secretaries, American Society of Corporate Executives, and Georgeson Shareholder Communications.

Should the Commission consider addressing issues relating to shareholder communications, the BRT Proposal should not be the starting point. Instead, we strongly urge that the Commission to establish an advisory committee that includes the broad participation of institutional investors as well as their proxy voting advisory services.