



BY ELECTRONIC DELIVERY

May 3, 2004

Mr. Jonathan Katz  
Secretary  
U.S. Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, DC 20549-0609

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

Dear Mr. Katz:

On April 12, 2004 the Business Roundtable (BRT) submitted a Petition for Rulemaking Regarding Shareholder Communications. On the same date Georgeson Shareholder Communications Inc. submitted a comment letter regarding SEC File No. S7-19-03 dealing with Security Holder Director Nominations. In that letter we described the shortcomings of the current proxy system that have led us to recommend the same reforms proposed in the BRT petition.

This letter is submitted in support of the BRT's rulemaking petition and for the purpose of clarifying how the proxy system would work in practice if the proposed reforms were adopted.

We believe that reform of the proxy system is timely and that simplified procedures and direct communication would confer substantial benefits on both issuers and shareholders. We urge the Commission to undertake these reforms irrespective of the decisions it may make with respect to proposed Rule 14a-11.

**How the proxy system would work if reforms suggested by the BRT and Georgeson were adopted:**

The reforms proposed by the BRT and Georgeson would eliminate many unnecessary and costly steps from the proxy process and establish direct communication between issuers and beneficial owners of shares in street name. The essential features of the proposed system would be as follows:

- On the record date for a shareholder meeting a series of omnibus proxies, originating with the Depository Trust Company and cascading down through successive layers of custodians, would pass voting rights to beneficial owners.
- Brokers, banks or their agents would generate lists of the record date beneficial owners, containing name, address, number of shares held on record date (but not the broker or bank affiliation).
- Beneficial owners on the lists would be entitled to receive proxy materials, make voting decisions and sign proxies.
- Issuers or their agents would distribute proxy materials directly to the beneficial owners.

- Tabulators would receive voted proxies directly from beneficial owners.
- Electronic technology and the Internet could be used by issuers for distribution of proxy materials and by beneficial owners for share voting.
- Brokers and banks would have no role in distributing proxy materials to beneficial owners or voting their shares.
- Discretionary votes by brokers under NYSE Rule 452 would be eliminated, as brokers would no longer participate in the voting process.
- A beneficial owner could choose to remain anonymous by creating a designated nominee account with a bank or broker. The designated nominee would appear as the beneficial owner on the record date list and would be legally empowered to vote (although the beneficial owner represented by the nominee could contractually retain the right to set voting policies and dictate specific voting decisions). Designated nominees could not be pooled in custodial accounts.
- Issuers would know the names, addresses and share ownership of beneficial owners and designated nominees and would be able to solicit them directly by mail, telephone or electronically.
- Presumably, dissidents conducting counter solicitations would be entitled to the beneficial owner lists and omnibus proxies on the same terms that they now access shareholder records under state and federal law.
- “Search” notices would continue to be sent by issuers to banks and brokers and their agents under the terms of SEC Rule 14a-13 for the purpose of notifying them of meeting and record dates and for determining the number of beneficial owners to whom issuers must distribute proxy materials. Search procedures could be modified over time to accommodate beneficial owners’ preference for electronic delivery of proxy materials.
- Beneficial owners who establish designated nominees would underwrite the costs of these arrangements, including the fees of banks and brokers for administering the accounts and their charges for forwarding proxy materials and voting proxies.
- The back-office infrastructure that now serves brokers and banks in forwarding proxy material, issuing vote instruction forms, tabulating vote instructions and voting on master ballots, would be eliminated. However, brokers and banks could still use agents to administer their customer records and prepare the record date lists of beneficial owners.
- Presumably, when beneficial owners hold shares of an issuer in multiple broker or bank accounts, “householding” would continue for the purpose of eliminating duplicate mailings of proxy material. However, multiple accounts would be voted separately in order to permit vote confirmation and to provide an unbroken audit trail. In theory, beneficial owners of multiple accounts would over time increasingly opt for electronic rather than physical delivery of proxy materials, reducing the need for householding.

The above points describe in general terms how a direct communication system would work, particularly during the initial period of transition from the current paper-based system. As electronic communications

and technology continue to improve, the proxy system should adapt, becoming simpler, more efficient, more technologically sophisticated, less reliant on intermediaries and less costly.

### **Benefits of direct communication:**

Direct communication would provide benefits to both issuers and investors. Least understood, but possibly of greatest importance, are the benefits to investors. These include:

- **Vote confirmation.** When a beneficial owner sends a proxy directly to the tabulator, the tabulator can confirm receipt of the specific vote. Confirmation is automatic when a shareholder votes electronically or telephonically. Vote confirmation is important to all shareholders, particularly to fiduciaries exercising voting power on behalf of others. Vote confirmation is also an essential safeguard against mistakes and fraud.
- **An audit trail.** The sequence of omnibus proxies, beneficial owner lists and direct voting by beneficial owners would create a detailed and reliable audit trail. An audit is necessary for sorting out complex problems such as the voting of loaned stock. It is essential in cases where legal challenges are made to voting results.
- **Elimination of discretionary voting by brokers.** Shareholders have been complaining for years about discretionary broker votes authorized under NYSE Rule 452. Direct communication would eliminate this practice by removing brokers completely from the voting process. At the same time, by providing the means to identify beneficial owners and solicit their votes, direct communication would reduce the risk that issuers with high retail ownership might fail to achieve quorum in the absence of discretionary votes.

Issuers would also benefit from direct communication:

- **Efficiency and cost reduction.** Direct communication would increase efficiency and reduce costs by eliminating the NOBO/OBO infrastructure and its complex and time-consuming procedures for distributing proxy material and voting shares through banks and brokers. Although paid for by the issuer, these costs are in reality borne by all shareholders, whether or not they participate in street name arrangements. By eliminating unnecessary procedures and costs, direct communication would improve the proxy system's efficiency, accountability and transparency.
- **Increased use of technology in communications and share voting.** Electronic access is the most effective means for issuers to distribute disclosure and communication documents. Paper documents are more expensive to produce and far less efficient to use and store. Electronic voting is also more effective than paper proxies, as it allows shareholders to electronically access and review linked proxy disclosures at the time voting decisions are made. Electronic votes can be cast at any time from anywhere around the world, without postal delays, and can be revoked or amended instantaneously up to the closing of the polls. All these benefits would be more accessible under a system of direct communication.
- **Identification of beneficial owners.** As discussed in greater detail in our previous comment letters, we believe the proxy rules embody contradictory goals of transparency and investor privacy. Direct communication would not compromise either goal. Most importantly, it would increase transparency, eliminate delays and obstructions in shareholder communications and give issuers a better understanding of who owns their shares. At the same time, it would permit investors to selectively protect their privacy through nominee

accounts, albeit at their own expense. In our opinion, this arrangement would strike an appropriate balance between transparency and privacy.

We believe that opposition to proxy reform and direct communication will come primarily from those with a vested interest in the current system. The high cost of the proxy process in its present form translates into profits for those who provide the services needed to make it work. Indeed, Georgeson includes itself among those whose business benefits in part from the proxy system's complexity and inefficiency. Nevertheless, we believe that reform is urgently needed and that our business can be adapted to meet the needs of a reconfigured and more efficient proxy system.

We urge the Commission to examine the proxy system carefully and to make the changes needed to protect the interests of the constituencies that matter most – shareholders and issuers.

Respectfully submitted,

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