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 COMPTROLLER

SECURITIES AND EXCHANGE COMMISSION  
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 SEP 23 2003  
 DIVISION OF MARKET REGULATION

September 15, 2003

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

57-14-03

Dear Mr. Katz:

As Comptroller of the City of New York, I am a trustee of four of the five New York City pension funds (the "Funds"), and the investment adviser to the five Funds, with aggregated assets of **over** \$70 billion, invested primarily in the securities of publicly-traded companies.

On behalf of the Funds' boards of trustees, I commend the Securities and Exchange Commission for proposing enhancements, in Release No. 34-48301, to existing disclosure requirements regarding the operation of board nominating committees; and a new disclosure requirement regarding the means by which shareholders may communicate with members of the board of directors.

The **proposed** enhancements to existing disclosure requirements regarding the operation of board nominating Committees are an important first **step** in reforming company elections and improving the selection of directors. However, the usefulness of the proposed requirements would **be** significantly diminished absent a new rule that would require public companies to include in their proxy materials shareholder-nominated candidates for election to their boards.

I would also urge the Commission to propose a requirement that the boards of publicly-traded companies establish means by which security holders **may** communicate directly with the boards, particularly with non-management directors. The creation of such means of communication would benefit companies through constructive discussions of perspectives, enhanced understanding, valuable feedback, and **the** fostering of meaningful links between directors and the shareholders by whom they are elected. Without such a requirement, far too many companies will continue to avoid and prevent direct communications between shareholders and boards of directors. This omission will retard the restoration of investor confidence in the **governance** of companies and the stock markets.

In addition, the new rules should include minimum standards aimed at buttressing board independence and accountability to shareholders. At a minimum, companies should be required to disclose in their **proxy** statement and on their web sites:

- how shareholders can send communications to the Board;
- the name(s) of the director(s) and/or board committee responsible for receiving and disseminating the communications to the board, and responding to the shareholders;
- detailed description of the responsibilities of the receiving director(s) and or committee upon receiving shareholder communications;
- detailed description of the board's procedures for considering the communications;
- detailed description of the board's procedures for responding to shareholders; and
- the board's policies and procedures regarding in-person meetings with shareholders.

The Commission should also take further action to ensure that the election of directors by shareholders provides a meaningful check on the performance of boards of directors. The shareholder franchise is the underpinning upon which the legitimacy of directorial power rests. It empowers shareholders to replace directors when they fail to serve the interests of the company and shareholders. In reality, however, this franchise is a myth. The high costs and legal complications of running a candidate for election to a company's board create an insurmountable barrier to effective shareholder participation in the nomination and election of directors. The shareholder franchise is rendered empty and meaningless, and the elections of unopposed company-nominated candidates are largely guaranteed. To the detriment of shareholder interests, there is no correlation between this annual entrenchment of incumbent power and **value** creation. Indeed, this annual ritual is routine even in companies that consistently under-perform.

This gutting of the shareholder franchise has eliminated a powerful incentive that potentially would motivate and challenge incumbent directors to pursue high performance and to be accountable to the shareholders who elect them. Directors can rest **easy** in complacency because the likelihood of their removal by shareholder vote is at best remote.

I believe the proposed rules would be strengthened with the following modifications:

- a requirement that companies disclose how the nominating committee addresses the issue of board diversity, if at all, in the recruitment and nomination of candidates for election to the board;
- a requirement that companies disclose the names of third parties used to identify director nominees and whether such third parties were retained by the company;
- a requirement that companies disclose the names and affiliation, if any, of the sponsor(s) of each candidate, and familial and/or business ties between the candidate(s), sponsor(s), management, and members of the board of directors; and

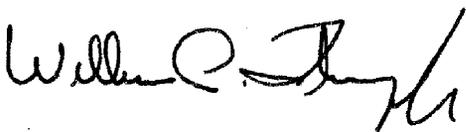
- a requirement that companies disclose the name of any rejected shareholder-recommended candidate, providing the candidate consents to being identified in the company's proxy statement.

Finally, I strongly support the recommendation of the Council of Institutional Investors that the Commission clarify that any shareholder or group of shareholders submitting a director candidate will not jeopardize their 13G filing status. I urge the SEC to create a safe harbor for the following activities: submitting candidate(s) to the nomination committee for election to a company's board; "vote-no" campaigns; and running "short slate" that does not constitute a majority of a company's board.

These few changes would significantly strengthen the proposed rules and contribute further to shareholder democracy and corporate governance reform.

Should you have any question, please contact Ken Sylvester. He can be reached by telephone at (212) 669-2013, and by e-mail at: [ksylves@comptroller.nyc.gov](mailto:ksylves@comptroller.nyc.gov)

Very truly yours,



William C. Thompson, Jr.

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