



INSTITUTIONAL SHAREHOLDER SERVICES

April 12, 2004

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549

Re: Security Holder Director Nominations
(Release No. 34-48626; IC-26206; File No. S7-19-03; RIN 3235-AI93)

Via e-mail: rule-comments@sec.gov

Dear Mr. Katz:

This letter is in reference to the letter of April 7, 2004, from Professor Joseph A. Grundfest of Stanford Law School, which was also joined by the American Society of Corporate Secretaries and Barclays Global Investors.

Professor Grundfest urges the Commission to consider a proposed new Rule 3a7-1, which would define as “unratified” directors who are elected pursuant to state law but who fail to obtain a majority (or some other unspecified percentage) of the votes cast. Boards that permit unratified directors to continue to serve would be required to make extensive disclosures regarding the deliberations and decisions of such boards as well as committees on which unratified directors sit. The disclosures would give shareholders considerable information about board processes and decision-making on boards that include directors elected with less than majority vote. The disclosures would also create disincentives for boards to continue to include directors who fail to meet the requirements of proposed Rule 3a7-1.

Institutional Shareholder Services continues to believe that the Commission’s proposed Rule 14a-11 should be adopted. While we have urged changes in the proposed rule (see our earlier comment letter and our comments at the recent March 10, 2004, Roundtable discussion) we believe that proposed Rule 14a-11, which would provide significant long-term shareholders with a realistic opportunity to have their own nominees for director included in a company’s proxy materials, is a sound proposal.

We also believe that the Grundfest proposal has considerable merit. While it does not offer a means for shareholders to have their own nominees included in a company's proxy materials, it does provide strong incentives for companies to seek majority-vote election of all directors. Companies that chose to permit directors who failed to receive a majority of votes to serve on their boards would face disclosure requirements that few companies, and few directors, would find attractive. The likely result would be to encourage companies to elect directors by majority, rather than plurality, votes.

We have two suggestions regarding the Grundfest proposal. If the Commission decides to adopt Rule 14a-11 substantially as proposed, we urge the Commission to consider separately the adoption of a new rule substantially along the lines of that offered by Professor Grundfest. Alternatively, if the Commission decides to repropose Rule 14a-11, making changes in the proposal that it believes require public comment, we urge the Commission to include Professor Grundfest's proposal in the revised Rule 14a-11, as a supplement to, and not a replacement for, the right of shareholders to have their director nominees included in company proxy materials.

We would expect to provide more detailed comments on Professor Grundfest's proposal at a later date, should the Commission decide to seek public comment on either of the above alternatives.

Sincerely,
James E. Heard
Vice Chairman