



NASAA

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March 31, 2004

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

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

**RE: Security Holder Director Nominations
File No. S7-19-03**

Dear Mr. Katz:

The North American Securities Administrators Association, Inc. (NASAA)¹ is pleased to comment on the Commission's proposed security holder director nominations rules. As described in the Commission's release, the proposals are intended to set forth circumstances under which a company with securities registered under Section 12 of the Securities Exchange Act of 1934 would be required to include in its proxy materials disclosure regarding security holder nominees for election as director. The proposed rules would apply only where security holders are permitted by the law of the state under which the company is organized to nominate a candidate for election as a director.

Under the proposal, the obligation to include shareholder nominees for directorships in a company's proxy materials would be triggered when, during the calendar year in which the meeting that is the subject of the proxy statement is being held or during either of the preceding two calendar years, at least one of the following events has occurred:

At least one of the company's nominees for the board of directors for whom the company solicited proxies received "withhold" votes from more than 35% of the votes cast at an annual meeting at which directors were elected; or

A proposal pursuant to Exchange Act Rule 14a-8 providing that the company become subject to the security holder nomination procedure in proposed Exchange Act Rule 14a-11(a) is submitted for a vote by security holders at an annual meeting of security holders by a group of security holders that held more than 1% of the company's securities entitled to vote on the proposal for one year as of the date the proposal was submitted, and that proposal received more than 50% of votes cast on the proposal at that meeting.

¹ The oldest international organization devoted to investor protection, the North American Securities Administrators Association, Inc. was organized in 1919. Its membership consists of the securities administrators in 50 states, the District of Columbia, Canada, Mexico and Puerto Rico. NASAA is the voice of securities agencies responsible for grassroots investor protection and efficient capital formation.

NASAA supports Commission efforts to examine its proxy rules with a view toward providing long-term security holders with meaningful input into the selection of company directors. Current SEC rules require a security holder seeking minority representation on the board to undertake the costly process of disseminating a separate proxy statement. The effect is to exclude most security holders from the nominating process. NASAA favors an inclusive approach that, upon meeting appropriate thresholds, would give security holders greater participation in the nomination process. We also support the initiative because it would reduce the cost for security holders to voice dissatisfaction with the response of company leadership to concerns elicited by the proxy process.

NASAA notes that proposed Exchange Act Rule 14a-11(a)(1) would apply only where the laws of the state in which the company is domiciled permit security holders to nominate a candidate for election as director (Exception). Although this provision is an acknowledgment by the Commission of the historical function of state law in matters of corporate governance, it may act as a catalyst for companies to lobby state legislatures to amend corporate statutes in such a manner as to allow them to take advantage of the Exception thereby achieving an opposite result.

As an alternative, NASAA suggests that the Commission focus on rulemaking that would require a national securities exchange or quotation system operated by a national securities association registered under the Exchange Act to adopt a provision similar to proposed Exchange Act Rule 14a-11(a)(1) sans Exception for any company that has a class of equity securities listed or quoted. This would have the salutary effect of avoiding (1) potential conflicts with state corporation laws; and (2) imposition of additional compliance costs on companies that may have securities registered under Section 12 of the Exchange Act but do not have a class of securities listed or quoted on a registered national securities exchange or quotation system.

If you have any questions, please do not hesitate to contact Robert Lam, Chair of NASAA's Shareholders' Rights Project Group and Chairman of the Pennsylvania Securities Commission.

Sincerely,

Ralph A. Lambiase

Ralph A. Lambiase
NASAA President and
Director, Connecticut Division of Securities