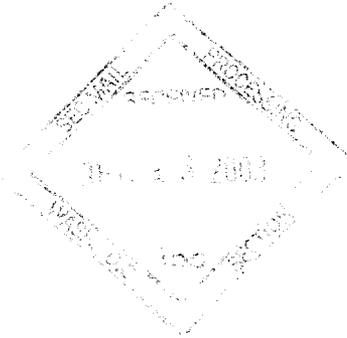


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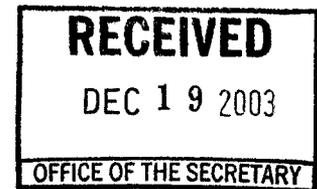
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ICGN



December 17, 2003

Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549



Dear Sirs:

**Re: Proposed Rule: Securityholder Director Nominations,
Release Nos. 34-48626; IC-26206 (October 14, 2003),
86 Fed. Reg. 60,783 (October 23, 2003) (the "Release")**

The International Corporate Governance Network (the "ICGN") is pleased to make the following comments concerning the Release.

The ICGN is the premier investor-driven world-wide organization for corporate governance. A large number of its members are officers of investors, both institutional and private, and their advisors, with assets of approximately \$10 trillion. Members also include leading experts and commentators on governance from all of the major and many of the emerging markets. The ICGN seeks to represent a global consensus on the role of corporate governance in capital markets and, in particular, on what is required by investors in respect of corporate governance. In addition, the ICGN produces reports on current issues and comments on developments. Recent documents may be accessed on its website (www.icgn.org).

The ICGN applauds the objectives reflected in the Release requiring U.S. companies to provide shareholders with improved access to their proxy materials to nominate directors. Indeed, the principal message the ICGN wishes to deliver in this letter is that the direction of the reforms proposed in the Release will bring U.S. practice closer to international governance practices (which are detailed below). However, as will be apparent from our comments, U.S. practice, as reflected in the Release, falls considerably short of the international standard. The ICGN therefore encourages the SEC to use all of its authority to drive reform in the U.S. to reduce, and ultimately, eliminate the differences between U.S. practice and international practice.

The ICGN holds the view that shareholders, as responsible owners of a company, have basic rights in matters of appointment and removal of individual directors. Therefore, in order to discharge their duties in such essential matters, shareholders should have appropriate access to the voting and proxy machinery unhampered by restrictions which unnecessarily undermine their exercise of this basic right. The ICGN, thus, has reservations concerning some of the approaches the Release takes to achieve its objectives, namely requiring the occurrence of certain triggering

events, or imposing certain restrictions on securityholders eligible to obtain access and imposing eligibility standards upon director nominees. The experience of ICGN members is that other developed markets have addressed the same objectives relying upon relatively simple corporate law provisions, of the kind outlined below. Indeed, the ICGN would like to propose to the SEC that it exercise its influence and power to achieve reforms similar to those contained in the next paragraph.

These provisions would enable holders of not less than 5% of the voting shares of a corporation to requisition the directors to call a meeting of shareholders for the purposes stated in the requisition. The purposes stated could include the nomination and election of replacement directors, as well as the removal of specified directors (by ordinary resolution). The directors are required to call a meeting of shareholders to transact the business stated in the requisition unless the board has already called a meeting of shareholders. If the directors do not call the meeting then any shareholder who signed the requisition may call the meeting. The corporation is required to reimburse the shareholders the expenses reasonably incurred by them in requisitioning, calling and holding the meeting, unless the shareholders otherwise resolve at the meeting called by the shareholders. If the directors have already called a meeting, the option for shareholders is to use the shareholder proposal mechanism which may include nominations for the election of directors.

The ICGN recommends a rule patterned after the above provision and notes that its experience in other jurisdictions has been that these provisions have not been abused by “constituencies of shareholders”.

The experience of ICGN members is that where they exist, the provisions recommended above generally have the effect of improving the effectiveness of the dialogue (from the shareholders’ perspective) which regularly occurs between shareholders and the board of directors as to the governance of the corporation. Although full execution of the rights afforded shareholders detailed in such provisions is indeed a rare occurrence, nevertheless their availability is important to shareholders seeking to improve the quality of governance of a corporation.

In addition, the ICGN recommends against :

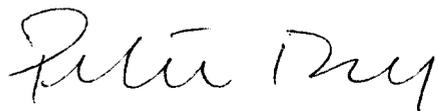
- a requirement for “triggering events” and would simplify the requirement for eligible securityholders to enable the holders of not less than 5% of the issued shares of the corporation carrying the right to vote at a meeting to access the meeting requisition and agenda setting mechanism; the main point being that in any event, it would take a majority decision to carry the election
- time limitations during which the mechanism can be implemented

- the SEC proposal that to be eligible for nomination to the board, securityholder nominees must satisfy the independent standards of a national securities exchange and have no specified relationship to the securityholders who nominated such nominee; other provisions govern the subject of independent directors and their minimum number, and must in any event be complied with so that there is no reason to further restrict choice here; put another way, nominees proposed by shareholders should not be subject to restrictions which are any different from restrictions imposed on nominees proposed by the board
- the limitation on the number of securityholder nominees that a company would be required to include in its proxy materials.

Members of the ICGN would be pleased to discuss the foregoing comments with representatives of the SEC.

Yours very truly,

ICGN Global Corporate Governance Principles Committee



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