

DIANA DeGETTE

1ST DISTRICT, COLORADO

1530 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
202-225-4431
FAX 202-225-5657

DISTRICT OFFICE:
600 GRANT STREET, SUITE 202
DENVER, CO 80203
303-844-4988
FAX 303-844-4996

E-mail: degette@mail.house.gov

ENERGY AND COMMERCE COMMITTEE

SUBCOMMITTEE ON OVERSIGHT AND
INVESTIGATIONS

SUBCOMMITTEE ON COMMERCE, TRADE,
AND CONSUMER PROTECTION

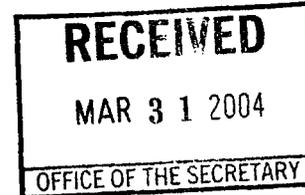
SUBCOMMITTEE ON ENVIRONMENT AND
HAZARDOUS MATERIALS

SUBCOMMITTEE ON HEALTH

Congress of the United States
House of Representatives
Washington, DC 20515-0601

March 15, 2004

Mr. Jonathan G. Katz
Secretary
United States Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549



778

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

Dear Mr. Katz:

I am writing you to express my support for the Commission's proposed rule to provide shareholder access to the corporate proxy. I believe that providing shareholders with increased power to elect members of corporate boards is a crucial step in ensuring effective corporate governance and I applaud the Commission for initiating such important reform.

As a member of the House of Representatives' Energy and Commerce Committee, I was actively involved in investigating the fraud that took place at Enron, WorldCom, Qwest and HealthSouth. In the course of these investigations, I was shocked to learn of the systemic nature of the fraud that occurred, not to mention the measures taken by the management teams to create and protect their own fortunes. However, an equally disturbing pattern to emerge through these investigations was the utter lack of accountability that existed on the part of the board of directors at each of these companies. Awash in conflicts, the directors consistently failed to uphold their fiduciary duty to protect the interests of shareholders, instead choosing to pander to the whims of management in order to satisfy their own self-interests. Yet, despite their role of overseeing and some would say, enabling the fraud, not one of the board members at Enron, WorldCom, Qwest and HealthSouth has been held accountable for their actions.

While the reforms following these widely publicized accounting scandals, such as the Sarbanes-Oxley legislation, have proven to be a good first step in increasing corporate accountability at the management level, such reforms have nevertheless left some directors insulated from, and unaccountable to, shareholders. In fact, while shareholders in theory have the power to replace directors who have failed to serve them, they remain effectively powerless in reality: disgruntled shareholders' only option to oust ineffective directors is to wage an exorbitant and usually unsuccessful proxy contest. Consequently, shareholders are oftentimes left to tolerate ineffective and irresponsible directors with virtually no recourse.

I believe that providing shareholders the ability to nominate qualified directors is essential in the effort to ensure that directors are accountable to, and have interests aligned with, those who they are intended to protect – the shareholders. While I believe that the Commission's proposed rule to provide shareholders access to the proxy, under specific circumstances, is a significant step

forward in fostering such accountability, I nevertheless think certain modifications could result in a final rule that would provide shareholders an even more meaningful say in the governance of the companies they own.

Specifically, I would encourage the Commission to modify one of the two events stipulated in the proposed rule that would trigger access to the proxy. As the rule stands now, one of the triggering events is the receipt of more than 35 percent “withhold” votes by any of the company’s nominees for director. I would propose that the Commission reduce the percentage of necessary withhold votes to 25 percent from 35 percent. I would argue that a quarter of dissenting shareholders is a sufficient indicator of shareholder dissatisfaction. Additionally, the 25 percent level symbolizes a substantial enough hurdle for shareholders undertaking a withhold campaign, thereby ensuring that access to the proxy would not be unfettered.

In addition to the two existing triggers in the proposed rule, I suggest that the Commission include a third event that would trigger shareholder access to the proxy: the failure of a company to act within twelve months on a shareholder resolution that receives a majority vote. A majority-passed shareholder resolution is an unequivocal message from the owners of a company to the management and board of directors to act on a particular issue; yet in the majority of cases, such resolutions go unheeded, sometimes year after year. I believe that this trigger alone could dramatically increase board of directors’ accountability to shareholders by providing them a clear incentive to acknowledge, respond and act on shareholder concerns that garner a majority of shareholder votes. I think this requirement would prove to be a breakthrough in the way in which directors view shareholders and their concerns.

Finally, I encourage the Commission to modify one of the criteria that shareholders must meet in order to be eligible to submit a nomination for inclusion in the company’s proxy once a triggering event has occurred. Under the proposed rule, once a triggering event has occurred, proxy access would be granted to those shareholders who beneficially own at least 5 percent of the company’s securities for a continuous period of two years or more. While I believe it is important that only long-term shareholders have access to a company’s proxy materials, I think the 5 percent security holdings threshold may prove to be burdensome for many investors. Accordingly, as I believe 3 percent beneficial ownership represents “significant” investor holdings, I would encourage the Commission to lower the security holdings requirement for access to the proxy from 5 percent to 3 percent.

Once again, I commend you and the other Commissioners for addressing this extremely important corporate governance issue. I believe that providing shareholders access to the corporate proxy is an integral step in improving corporate governance as well as in restoring investor confidence, and I applaud the Commission on its efforts to craft a balanced rule regarding this issue.

Thank you for the opportunity to share my opinion with you on this important matter.

Sincerely,

A handwritten signature in black ink that reads "Diana DeGette". The signature is written in a cursive, flowing style.

Diana DeGette
Member of Congress