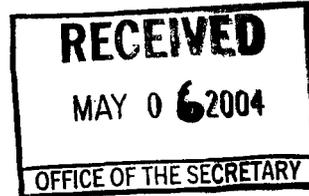


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May 3, 2004

Alan L. Beller  
Director, Division of Corporation Finance  
U.S. Securities and Exchange Commission  
450 Fifth Street, NW  
Washington, DC 20549-0609



Re: File No. S7-19-03

Dear Alan:

As you know, the Council of Institutional Investors, an organization of more than 140 public, corporate and union pension funds with more than \$3 trillion in investments, is eager for the Securities and Exchange Commission to adopt a meaningful rule to give shareholders limited access to management's proxy card to nominate directors. The sooner this important reform is put in place, the better for the investing public and for U.S. companies.

The Council sincerely appreciates the tireless efforts of the SEC staff and the Commissioners to finalize an appropriate regulation. We understand that the proposed rule continues to be debated and refined to address the extensive, and at times opposing, issues identified by the thousands of comment letters received on the proposal. Given this fluid situation, we thought it might be helpful and timely to provide feedback on some concepts that we understand are currently under consideration.

First and foremost, the Council agrees that the rule should be carefully crafted to give shareowners a tool usable at a limited number of companies with meaningful evidence of governance problems.

However, we are concerned that the rule may be so narrowly drawn as to render it a "once in a million years" reform.

Increased Withhold Vote Threshold

Increasing the withhold vote trigger to 50 percent of the votes cast for and against, excluding broker votes, would be a very significant change. As you know, the Council's random survey of 2003 director votes at 100 S&P 500 firms, 100 S&P MidCap 400 companies, and 108 S&P SmallCap companies found:

- **n0 companies** reporting that at least one director received a withhold vote of more than 50 percent of the votes cast, including broker votes;
- **six companies** (two S&P Midcap, four S&P SmallCap and no large cap companies)—only 2 percent of the entire survey group—reporting that at least one director had a withhold vote exceeding 35 percent, including broker votes.

Since companies currently do not have to break out broker votes, it is difficult—and at times impossible—to analyze the impact of broker votes on these tallies. The Council's narrow analysis of 110 companies reporting majority votes on shareholder resolutions in 2003 found:

- **14 companies** reporting that at least one director received a withhold vote exceeding 35 percent, excluding broker votes;
- **nine companies** reporting that at least one director received a withhold vote exceeding 40 percent, excluding broker votes;
- **one company**—less than 1 percent of the sample—reporting that at least one director received a withhold vote exceeding 50 percent, excluding broker votes.

One could argue that these broker-vote-free statistics are inflated, since the Council's survey focuses on a subset of companies that may be most prone to high withhold votes. Regardless, the survey results suggest that a 50 percent threshold would be relevant to a very limited number of companies.

The Council's survey found that broker votes represented on average 15 percent of the total votes cast for directors. This number varied significantly, as would be expected, with companies having a heavier weighting of individual investors generally reporting a higher percentage of broker votes than companies with a preponderance of institutional investors.

The following facts assume a 15 percent broker vote:

- Eliminating broker votes only affects the denominator of the withhold vote calculation. As a result, a 35 percent withhold vote including broker votes does not translate into 50 percent withhold vote excluding broker votes.
- A 35 percent "no" vote including broker votes would increase to 41.2 percent excluding broker votes.
- A "no" vote exceeding 42.5 percent including broker votes would be necessary to reach a 50 percent "no" vote excluding broker votes.

#### Cure vs. No Cure

Given the significance of the withhold vote trigger—regardless of whether the level is set at 35 percent including broker votes or 50 percent excluding broker votes—the Council believes that it is unnecessary and inappropriate to give companies the ability to "cure" a trigger, whether by removing a director or taking some other mandated action.

In the case of shareholder access, the Council believes that the best cure is no cure. Once shareholders have satisfied the significant withhold vote threshold, they should have the ability to run one or more candidates the following year.

Of course, shareholders may or may not choose to run a candidate, depending on their assessment of how a company responds to the vote. But such a decision is company-specific and situation-specific. In some cases, the removal of a director may be satisfactory to shareholders; in others, it may not. In all cases, the decision on whether a company has adequately responded to a significant withhold vote should be left to shareholders—not the SEC.

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Alan L. Beller  
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Other Hurdles Protect Against Abuses

Also, it's important to note that even if shareholders do decide to run an alternative candidate, they still must satisfy the stringent 5-percent-for-two-continuous-years ownership requirement and their candidate must then win either a plurality or majority of the votes cast. Both additional hurdles ensure that the rule cannot be abused or misused by a minority of shareholders.

We agree that the rule should be carefully crafted to protect against excesses and abuses. However, we urge the SEC to ensure that refinements to the proposal don't narrow the rule so significantly as to render it essentially meaningless or useless.

The Council thanks the staff of the Division of Corporation Finance for its leadership in this important area.

Please contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'S.A.B. Teslik', with a stylized, cursive script.

Sarah A.B. Teslik  
Executive Director

cc: Chairman William H. Donaldson  
Commissioner Paul S. Atkins  
Commissioner Roel C. Campos  
Commissioner Cynthia A. Glassman  
Commissioner Harvey J. Goldschmid  
Martin P. Dunn, Deputy Director, Division of Corporation Finance