



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

October 14, 2004

The Honorable William H. Donaldson  
Chairman  
United States Securities and Exchange Commission  
450 Fifth Street, NW  
Washington, DC 20549

ES 109269  
#9  
SR-NYSE-2004-41

Dear Chairman Donaldson:

We are writing you to express our opposition to several of the revisions that the New York Stock Exchange ("NYSE") recently proposed to make to its corporate governance listing requirements. Specifically, we worry that the NYSE's proposed modifications to the independence standards for corporate directors seriously undermine the commitment the NYSE has made to increase accountability on the part of corporate directors at its listing companies. We are also disturbed that the NYSE attempted to make these changes, some of which are obviously controversial, without soliciting input from the public, and we commend the Securities and Exchange Commission ("SEC") for requiring the NYSE to submit the proposed changes to the public for comment.

As you are aware, many of the cases of corporate fraud and deception that both Congress and the SEC have taken an active role in investigating involved corporate boards that, either out of complacency or self-interest, abdicated their fiduciary duty to protect shareholders and instead, functioned as rubber stamps for management. Trying to remedy this seemingly systemic failure on the part of boards of directors to provide oversight of management and to protect the interests of shareholders has been at the heart of the corporate reforms initiated by Congress, the SEC and the various stock exchanges, including the NYSE.

To be clear, we applaud the recent efforts of the NYSE to bolster corporate governance practices of its listing companies and note the importance of the NYSE's leadership in doing so, given the exchange's powerful role in our country's free market system. The corporate governance standards promulgated last year by the NYSE, which not only tightened the definition of independent directors, but also required strict standards for the composition of the board at large as well as for the compensation and nominating boards, are – and arguably, should be – the gold standard for corporate governance practices in our country.

However, with that said, we are seriously concerned that the NYSE's recent proposals to broaden the definition of who constitutes an independent director would undermine the efforts made by the NYSE, Congress and the SEC to improve corporate governance in our country. As you know, the notion of independence is central to many of these reforms and their success depends primarily on a strong standard of independence for corporate directors.

Specifically, we think the NYSE's proposal to allow an independent director to have closer ties to the auditor of the company on whose board he or she sits represents a major step back in the efforts to ensure that a director's interests are aligned with those of the shareholders, not those of auditors, banks or management. Under the proposed changes, the three-year look-back requirement would only apply to former partners and employees of an auditing firm who personally worked on the company's audit. We think the three-year look-back requirement should apply to all former auditing partners and employees, as it does now under the NYSE's current listing requirements, and would view a change to this standard as only inviting more conflicts of interest into the corporate boardroom.

Similarly, we are concerned that loosening the definition of family members for purposes of evaluating relationships with an outside auditor would only work toward making directors less independently-minded, not more so. Since this change diverges significantly from other exchanges' standards and would have the result of making it easier for directors of its listing companies to qualify as independent, we can only assume that the NYSE's motivation behind advocating for this change is to satisfy the desires of its listing companies, not necessarily out of a want to protect investors.

While we are encouraged by the commitment to corporate governance that the SEC, the various exchanges and Congress have made in response to the corporate scandals that took place at companies such as Enron, we recognize that these entities still have much to do in order to help reduce corporate malfeasance in our country. We think that the NYSE's proposed modifications to their corporate governance standards to the definition of independence for directors not only do not advance this goal, but could actually precipitate more malfeasance by opening the door to conflicts of interest, which could ultimately compromise a director's ability to protect the interests of shareholders. While we don't wish that the listing requirements for the NYSE be so onerous that companies cannot operate efficiently, by and large, we think that good governance practices only lead to a positive environment for business and one in which investors have confidence. It is therefore our hope that the SEC does not allow the NYSE to dilute the definition of independence for directors and we encourage the NYSE and the SEC to continue with their efforts to improve corporate governance in our country.

Sincerely,

  
DIANA DeGETTE  
Member of Congress

  
EDWARD MARKEY  
Member of Congress

  
JANICE SCHAKOWSKY  
Member of Congress