



May 25, 2007

Ms. Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Roundtables on Shareholder Rights and the Federal Proxy Rules
File No. 4-537

Dear Ms. Morris:

America's Community Bankers¹ is pleased to submit comments in conjunction with the U.S. Securities and Exchange Commission ("SEC") roundtables on shareholder rights under state law and the federal proxy rules. We commend the SEC for holding roundtables on this important issue. Our community bank members are concerned with any rule that would require the inclusion of shareholder nominees for election as director in corporate proxy materials. On October 23, 2003, the SEC proposed a rule, Rule 14a-11, which would have provided shareholders with direct access to a company's proxy for the purpose of nominating directors.² The SEC has not finalized that controversial proposal.

ACB's Position

ACB strongly opposes revisions to the Securities Exchange Act of 1934 ("Exchange Act") that would require corporations to allow shareholders to place their director nominees on corporate proxy ballots. ACB believes that Exchange Act Rule 14a-8³, as currently written, is a well-established rule that provides a fair and balanced mechanism to determine the eligibility and procedural requirements for shareholders to submit proposals to be considered for inclusion in a company's proxy materials. A shareholder proposal that meets the procedural requirements of the rule may be included in proxy materials. The rule also contains thirteen specific exclusions of shareholder proposals, including an exclusion that relates to the election of directors. ACB urges the SEC to reaffirm its current interpretation of the Rule 14a-8 exclusions and permit companies to continue to exclude shareholder proposals relating to the election of directors.

¹ America's Community Bankers is the national trade association committed to shaping the future of banking by being the innovative industry leader strengthening the competitive position of community banks. To learn more about ACB, visit www.ACB.us

² 68 Fed. Reg. 60784 (Oct. 23, 2003).

³ 17 C.F.R. §240.14a-8.

Background

General Concerns

The corporate scandals of Enron and WorldCom led shareholders to question whether boards of directors were meeting their responsibilities and adequately representing shareholder interests in corporate matters. Investor advocates urged the SEC to amend Exchange Act Rule 14a-8 to provide a procedure whereby shareholders could promote their interests by nominating director candidates for election at annual meetings. In 2003, the SEC proposed a new rule, Rule 14a-11 that would give shareholders the ability to directly nominate directors for inclusion in a company's proxy materials. ACB opposed the SEC's proposal and urged the SEC to withdraw the proposed rule.⁴ The proposed rule was never finalized by the SEC.

We believe that this issue is again before the SEC and is the topic of the roundtables because of the ruling in September, 2006 by the U.S. Court of Appeals for the Second Circuit in American Federation of State and Municipal Employees v. American International Group, Inc. In this case, the court called for the SEC to clarify its inconsistent interpretation of Exchange Act Rule 14a-8(i)(1), which is the section that concerns shareholder proposals that relate to the election of directors. We urge the SEC to rectify any procedural issues with the rule as recommended by the court without going further.

Many of the shareholder concerns raised by corporate fraud scandals were addressed when Congress enacted the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley"). Sarbanes-Oxley requires corporate responsibility for financial reporting and the establishment of board audit committees comprised of independent audit committee members. The corporate governance reform efforts, however, did not stop at audit committees. Because of Sarbanes-Oxley, the SEC and the national stock exchanges went beyond audit committee reforms and adopted additional rules and listing standards for corporate governance compliance. These rules and listing standards provide additional protections for shareholders.

For example, SEC rules now require companies to disclose more information about the director nomination and shareholder communication process.⁵ The New York Stock Exchange ("NYSE") requires companies to adopt a code of conduct and ethics for directors. It also requires listed companies to have three committees: an audit, nominating or corporate governance, and compensation committee, composed entirely of independent directors.⁶ Certain of our community bank members report that their nominating committee charters require the committee to seek director candidates that would bring to the board diversity, a business background balance, and community representation as well as appropriate financial experience and expertise.

⁴ See letter dated December 18, 2003 from ACB's Director of Regulatory Affairs and Senior Regulatory Counsel, Charlotte M. Bahin, to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission.

⁵ 17 C.F.R. § 240.14a-101.

⁶ See New York Stock Exchange, Inc. Rulemaking Relating to Corporate Governance; See SEC Release No. 34-48745, National Association of Securities Dealers, Inc.

The Nasdaq Stock Market, Inc. requires director nominations to be made by either a nominating committee comprised of independent directors or by a majority of the company's independent directors. Board compensation committees have similar independence requirements. These corporate governance reforms require more independent and effective boards and expand the opportunities for shareholders to have their interests and concerns represented and considered by boards of directors.

Permitting shareholders to nominate their own director candidates would open up the proxy process to a few aggressive shareholders with their own narrow interests that are not necessarily representative of the interests of the majority of shareholders. In addition, these special interests may not be in the best interests of the company and may run counter to the initiatives for independent boards. Often these proposals involve political, social or environmental causes that have little bearing on a company's business or its profitability.

Furthermore, shareholder-nominated directors can disrupt board proceedings and create adversarial relationships that may prevent the board from acting quickly and responsively on critical issues. Boards of directors are not political entities attempting to balance competing interests. Boards of directors are governance bodies that oversee the company's strategic plan and management. They work cooperatively to further the mission of the company and enhance shareholder value. For boards of community banks, this mission is the contribution the business of banking makes to the economic growth of the community.

Allowing shareholders to nominate directors raises a host of legal issues. We believe that required inclusion of shareholder nominees in the proxy process would interfere with state corporation law and exceed the authority of the SEC under Section 14 of the Exchange Act. State law is the substantive law governing director elections, while the SEC's proxy rules provide for disclosure and procedure. There must be consideration that a shareholder nominee will be qualified to serve as a director and accept all of the responsibilities and liabilities of being a director of a public company. Under SEC rules, full disclosure will be required of any shareholder nominee and this information will be required to appear in the proxy statement. It is uncertain if that nominee or the company will be responsible for any materially false or misleading statements in proxy soliciting materials.

Specific Concerns for the Banking Industry

ACB strongly believes that shareholder access to corporate proxy materials is not appropriate in the highly regulated banking industry. Directors of publicly held banks are subject to a complex framework of federal and state banking laws and regulations. These laws and regulations have their own standards of eligibility for directors. Bank regulators require banks to file an application or notice with a banking agency before adding a director to the board. Individuals convicted of criminal offences or subject to cease and desist orders for conduct involving dishonesty or breach of trust are prohibited by regulation from serving as directors of financial institutions. Whether private or public, banks with assets of over a billion dollars are required to have independent audit committees and bank examiners review board minutes to evaluate board actions, including executive officer compensation.

Individuals that are considered for election as directors of banks must have the expertise and skills to discharge their fiduciary duties in this highly regulated banking industry. Not only do the directors answer to shareholders, they also answer to federal and state regulators. A shareholder nominee may not be fully aware of these responsibilities and duties and may not have the credentials necessary or the desire to perform them in a satisfactory manner. This is particularly true if the shareholder's issue is political or narrow.

ACB is particularly concerned with shareholder director nominees and access to the proxy process as it relates to mutual institutions. These proposals may discourage these institutions from converting to stock form. In addition, expansion of Rule 14a-8 to allow shareholder director nominees could give investors with narrow self-interests additional leverage to force a sale or merger of a mutual institution after conversion. These shareholders are often looking only to receive gains from their stock ownership and are not concerned with the long-term governance of the institution.

Conclusion

ACB appreciates the opportunity to submit comments to the SEC as part of the roundtables on the proxy process. If you have any questions or would like to discuss this issue in greater detail, please contact Patricia Milon at (202) 857-3121 or via e-mail at pmilon@acbankers.org or the undersigned at (202) 857-3186 or via e-mail at shaeger@acbankers.org.

Sincerely,



Sharon Ann Haeger
Regulatory Counsel