INTERNATIONAL
BROTHERHOOD OF TEAMSTERS
AFL-CIO

S7-19-03

OFFICE OF
JAMES P. HOFFA
GENERAL PRESIDENT

487

December 22, 2003

RECEIVED
DEC 23 2003
OFFICE OF THE SECRETARY

Mr. Jonathan G. Katz, Secretary
Securities and Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549-0609

Dear Mr. Katz:

On behalf of the 1.4 million active and 600,000 retired members of the International Brotherhood of Teamsters (IBT), I am pleased to comment on File No. S7-19-03, "Security Holder Director Nominations." This is perhaps the single most important issue currently before the Commission and has the potential to produce true and lasting reform. While the IBT generally supports the proposed rules, we believe that the safeguards ostensibly developed to prevent frivolous proxy contests are far more restrictive than necessary, and, as a result, the access provided by the proposed rules would be extremely difficult for even the largest institutional shareholder to use. Therefore, we urge the Commission to modify the proposed rules to allow long-term investors, like our Taft-Hartley funds, meaningful access to the corporate proxy to nominate directors.

The IBT commends Chairman Donaldson for his initiative and the Commission for formulating a rule that has the potential of providing shareholders with real advocates in corporate boardrooms. Proxy access has broad investor support. When public comments were requested last July, the Commission received nearly 10,000 letters supporting access to the proxy for shareholders. Despite this overwhelming support, the Commission has proposed a rule that includes significant limitations on proxy access. These limitations appear to be based on concerns raised by the business community, including the Business Roundtable and law firms that represent some of the nation's largest corporations.

We believe that the concerns raised by opponents of reform are overstated and that the limitations in the current proposal go too far, and, in fact, threaten to eviscerate the fundamental reform embodied in the rule. We address the concerns raised by opponents and the suggested limitations as follows.

Specious "Concerns"

Concerns that contested elections are "disruptive." Opponents say that the proposed rules would lead to disruptive annual election contests, the creation of adversarial relationships and adverse impact on director recruiting. While it is important to have a Board that is willing to work together to achieve the goal of optimizing share value, we believe it is equally important, as the lessons of Enron, WorldCom and Tyco have taught us, that Board members be willing to challenge CEO's with tough questions about the corporation. We do not believe that contested elections are disruptive or that they will automatically create adversarial relationships among board members. These criticisms by opponents of reform assume that board members elected as a result of these reforms will act irresponsibly and unprofessionally and give shareholders and the candidates they support far too little credit.

Members of the Board serve at the pleasure of the shareholders that elect them. But, as it has become all too obvious, corporate directors have forgotten who they are accountable to. According to the Corporate Directors Guidebook, "The principle responsibility of a corporate director is to promote the best interests of the corporation and its *shareholders* in directing the corporation's business and affairs."[1] Further, The Conference Board's Commission on Public Trust and Private Enterprise has recognized that, "A key role of the board of directors is to provide oversight to ensure that management acts in the best ... long term interests of the shareowners."[2] In addition, the Board suggests that in order to discharge their responsibility in the most effective way, boards of directors must, "... demonstrate loyalty exclusively to the corporation and the shareholders."[3] Allowing proxy access to independent candidates clearly encourages responsible corporate governance and gives shareholders a real opportunity to elect board members who are responsive to shareholder interests. The fundamental reform embodied in the new rule should not be defeated by unsupported fears expressed

---

[1] Corporate Director's Guidebook, American Bar Association, Section on Business Law, Second Edition, p. 4-5 (1994).
[2] Commission on Public Trust and Private Enterprise, Findings and Recommendations, The Conference Board, p. 15 (2003)
[3] Id. at 21.

by corporate insiders that elections and independent board members would be "disruptive."

Concerns that reforms enacted under Sarbanes-Oxley should be given more time to work. Opponents argue that the reforms enacted under Sarbanes-Oxley should be given time to work before the Commission moves to adopt further reforms. While necessary and appropriate, the reforms already enacted do little or nothing to address the core concern that under the current system directors are too closely aligned with management and rarely exercise any independent judgment concerning operation of the corporation. Proxy access is a fundamental step to insure that directors will act independently, will be responsive to shareholder concerns, and will contribute to building the long-term value of the corporations that they serve. As it stands today, shareholders have no meaningful way to replace poor performing, unresponsive or inattentive directors. Only proxy access can cure this problem. And, by promoting sound corporate governance, proxy access will lessen investors' need to rely on regulatory action and oversight.

Concerns that shareholders will nominate only special interest directors. Opponents claim that allowing proxy access will result only in the nomination of special interest directors. Again, this claim rests on unsupported speculation and ignores the fact that directors nominated through the proxy access procedure must have broad shareholder support in order to be successful. For example, IBT pension and health and welfare trust funds collectively hold approximately $100 billion in assets. These trust funds are interested in long-term growth and maintaining and enhancing the value of the shares they hold. These interests are typical of the shareholder interests that will be served by the new rules, and these interests cannot legitimately be characterized as "special interests."

Overly Restrictive Limitations

By adopting final rules that give responsible long-term investors timely and effective access to the proxy, the Commission can introduce genuine accountability to a boardroom culture that for too long has been characterized by cozy relationships and a resulting unwillingness to challenge management. This change is certain to yield significant benefits – in terms of board of director independence, performance and accountability – that extend well beyond the few companies at which the new rules are actually used.

While state laws provide shareholders with the right to nominate their own candidates for board directorships, the reality is that for most investors, even large institutional investors like our funds, this right remains effectively unavailable so long as shareholder nominees are denied equal access to the proxy. Incumbent directors can freely spend the corporate treasury to get re-elected to the board, while shareholder candidates are forced to mount largely cost prohibitive proxy fights in order to reach shareholders.

As proposed, the rules contain certain barriers that would make it difficult for even the largest investors to use effectively and virtually impossible for large shareholders to do so in a timely manner.

Triggering requirement. We believe the triggering requirements as proposed are unnecessary given the high ownership threshold required for shareholders to place nominees in the proxy. Moreover, the two proposed triggers create serious additional problems. First, the proposed triggers entail a two-year process, an untenable delay at a company or board in crisis. Second, the proposed 1% ownership requirement for shareholders to submit a triggering proposal is far too high. A shareholder seeking to introduce such a proposal at the average S&P 500 Company would need to hold shares worth over $180 million. This would unrealistically limit the ability of shareholders to take advantage of the proxy access procedures.

Ownership Threshold Considerations. While we support a significant ownership requirement for placing nominees in the proxy, we believe the proposed 5% threshold is too high. This threshold would require a shareholder or shareholder group seeking to place nominees in the proxy of the average S&P 500 Company to own shares worth roughly $900 million. We encourage the Commission to lower the threshold to 3%, a level that would more fairly balance the Commission's concerns with the interests of corporations and their shareholders.

Conclusion

Real representatives of shareholder interests are needed on corporate boards now more than ever. Establishing meaningful proxy access would introduce a fresh perspective to the Board and encourage increased responsiveness and accountability to shareholders. By providing an efficient means for shareholders to nominate candidates and communicate with other large, long-term shareholders, a shareholder right of access to the company's proxy would help bring accountability to our system of corporate governance.

If we can be of any assistance to the Commission as it considers this very important reform, please call the IBT's Office of Corporate Affairs at (202) 624-8100.

Sincerely,

James P. Hoffa

James P. Hoffa
General President

JPH/jo