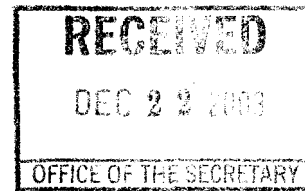


540

*International Union of Bricklayers
and Allied Craftworkers*

December 17, 2003

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



Re: File No. S7-19-03

Dear Mr. Katz:

On behalf of the 110,000 participants and beneficiaries of the Bricklayers and Trowel Trades International Pension Fund, I welcome this opportunity to offer supporting comments on Securities and Exchange Commission proposal S7-19-03, which would grant long-term investors limited access to the proxy for security holder director nominations.

The high-profile corporate scandals of the past few years have starkly highlighted the governance crisis among publicly traded companies. One of the gravest problems, common to almost all of the scandals, is the manner in which unethical behavior by CEOs and other executives is either ignored or condoned by passive boards of directors. Boards that are stocked with CEO-selected directors are far less likely to scrutinize executive misconduct than boards that are run by independent directors. But current proxy access rules make it difficult, if not virtually impossible, for shareholders to nominate directors other than those handpicked by the CEOs. We therefore applaud the Commission's timely proposal, which could break the CEOs' stranglehold on boards of directors and allow institutional shareholders to promote sound corporate governance.

The Commission's proposal prudently recognizes and attempts to balance two imperatives: the need to open the director nomination process to institutional investors, and the need to promote stability in corporate governance. As explained above, it is critical that CEOs are not allowed total control over the composition of boards of directors. That noted, it would be counterproductive if the current, sclerotic system were replaced with an anarchic regime where hostile takeovers and corporate raiding became the norm. We therefore commend the principles underlying the Commission's proposal to allow increased access to the proxy only to those shareholders with a demonstrated long-term interest in the company. But we also believe that the safeguards proposed by the Commission – while well intentioned – are too restrictive, and will unintentionally act as barriers to access for almost all long-term institutional shareholders.

In particular, we are concerned that the proposed ownership threshold will prevent even the largest institutional shareholders from taking advantage of the ability to place director nominees in the proxy. The proposed rules would allow only those shareholders and shareholder groups that have owned more than 5% of a corporation for at least 2 years to place director nominations in the proxy. Although we endorse the 2-year ownership requirement as a bulwark

against raiding by speculators, we are strongly opposed to the 5% ownership threshold. Such a threshold would require a Herculean organizing effort among institutional shareholders, as a 5% ownership interest in the average S&P 500 company is equivalent to a \$900 million shareholding. Even CalPERS, the nation's largest pension fund, rarely owns ½% of any public company. Most institutional investors, such as our Fund, never own more than ¼% of the shares of a given company. As a result, any long-term shareholder seeking to place director nominees in the proxy would need to recruit *dozens* of likeminded funds to get anywhere near the 5% threshold. We therefore encourage the Commission to lower the ownership threshold to 2½%. A 2½% threshold would allow concerned institutional investors a real opportunity to take advantage of the opportunity to introduce director nominees, while still preventing frivolous or malevolent abuse of the new rule.


Because the threshold and ownership requirements discussed above represent such a significant constraint on proxy access, we believe that the additional triggering requirements proposed by the Commission are superfluous. By requiring shareholders and shareholder groups to hold 5% of a company's shares for 2 years, the Commission has ensured that none but the most committed long-term investors will be able to place director nominees in the proxy. The Commission's additional triggering requirements are simply unnecessary in light of the safeguards erected by the threshold and ownership standards.

Moreover, we believe that the proposed 1% ownership requirement for shareholders to submit a triggering proposal is far too high. We feel that if there are to be triggering requirements, any shareholder meeting the existing 14a-8 requirements should be able to sponsor such a triggering proposal. And if the Commission persists in including a director withhold threshold in the new rules, we believe that historical experience dictates that the withhold threshold be no higher than 20%.

Again, we applaud the Commission's decision to allow long-term investors the opportunity to promote responsible corporate governance and sound oversight of corporate officers. We applaud the Commission's foresight and vigilance in limiting proxy access only to those investors with a demonstrated commitment to the companies in which they invest. And we applaud the Commission's willingness to listen to America's investors as we embark on this historic change. Granting long-term shareholders the ability to place director nominees in the proxy is certain to result in increased accountability and receptiveness to shareholder concerns, and reduce officer malfeasance. At a time when public confidence in publicly traded corporations is at an ebb, it is critical that the Commission's rulemaking offer a real opportunity to reform the director nomination process. The Commission's proposal is a strong first step toward meaningful reform; with a few changes, the new rules will allow shareholders a chance to restore confidence in the corporations that they own.

We thank you for this opportunity to offer our strong support for this historic proposal, and we trust that the Commission will give our concerns – as well as those of the other institutional investors who comprise such a large portion of shareholders – due consideration.

Sincerely,


John J. Flynn
President