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rule-comments@sec.gov

October 3, 2007

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

Re: Comments on Proposals Relating to Directors—File Numbers S7-16-07 and S7-17-07

Dear Ms. Morris:

The State Board of Administration (SBA) of Florida welcomes the opportunity to provide our comments on the Securities and Exchange Commission's: 1) proposed amendments to the rules under the Securities Exchange Act of 1934 ("1934 Act") concerning shareowner resolutions and electronic shareowner communications, as well as to the disclosure requirements of Schedule 14A and Schedule 13G ("Proposed Amendments"); and 2) interpretive and proposing release to clarify the meaning of the exclusion for shareowner resolutions relating to the election of directors that is contained in Rule 14a-8(i)(8) under the 1934 Act ("Proposed Release") (collectively, the "Proposals").

Although the SBA applauds the Commission for again evaluating proposed reforms to allow proxy access and amend proposal submission rules, the SBA cannot support either proposal as currently drafted. The following is a brief summary of some of our initial concerns in response to the Proposed Amendments and the Proposed Release. We start with the simpler Proposed Release.

Comments on File S7-17-07

Rule 14a-8(i)(8) currently allows exclusion of proposals that relate to nomination or election for membership on the board of directors. The pivotal component in this new proposal is the addition of the text, "or a procedure for such nomination or election." As supporters of proxy access under reasonably-drafted conditions, we feel this proposed addition is simply a step in the wrong direction. We are aware of the difficulties of ensuring compliance with proxy solicitation rules, including that shareowners are properly informed of the identity and intent of director candidates, particularly in control situations. We believe the Commission misses an opportunity for reconstructing the solicitation rules to better serve investor interests, so that it is possible to wage an election contest without conducting a separate proxy solicitation, when support of the majority of voting shareowners has been attained. The rules should be changed to fit this ability, not stodgily defend the status quo.

During the 2007 proxy season, three proxy access shareowner resolutions were presented for a vote, and all received significant support, including a proposal at Cryo-Cell International, Inc. which received over 50 percent majority support. We believe the Commission errs if it will not protect shareowners' opportunity to vote for proxy access on such a case-by-case basis.

As it is now, the only way that individual director nominees may be effectively challenged at some companies is if a shareowner is willing and able to assume the entire expense of nominating a slate of candidates and running

an election contest via a separate proxy. Such shareowner activism is generally cost prohibitive. The SBA, therefore, strongly supports reforms that would permit meaningful shareowner access to company-prepared proxy materials relating to the nomination and election of directors. We believe such reforms would make boards more responsive to shareowners, more thoughtful about whom they nominate to serve as directors and more vigilant in their oversight of companies.

Comments on File S7-16-07

We support investors' ability to gain access to the corporate proxy under certain conditions. Though this rule proposes such a mechanism, we cannot support the proposed rule on Shareholder Proposals as it is unduly restrictive with regard to proxy access proposal submissions and will likely have a negative impact on shareowners rights.

Bylaw Proposals for Shareowner Nominations of Directors

We do not believe that proponents of bylaw amendments for proxy access should be subject to heightened disclosure requirements compared to those for submission of any other bylaw amendments. We consider the increased disclosure of Schedules 13G and 14A to be necessary only for actual nominees for directorship submitted under a shareowner-nomination bylaw. We are not in favor of adding new items 8B and 8C to the Schedule 13G. These items would require detailed information on the proponent's background, in-depth description of any meetings held with company representatives during the previous twelve-month period, information concerning certain relationships with competitors of the company, and any contracts, litigation or material relationship between the proponent and any affiliate of the company. Since the proxy access proposal is not specific to any one particular shareowner's ability to obtain proxy access, we feel the proponent should not be subject to such unnecessary disclosures. Likewise, we feel the addition of Item 24 to the Schedule 14A to be unnecessary. This item would require the company to disclose detailed information concerning any meetings, direct or indirect interests, or material transactions between the proponent and company or its affiliates.

We also feel that shareowners should generally be able to make proposals without holding period requirements. However, since a one-year holding period is required of other proposal types, we feel the time period for proxy access proposals should match. Also, the word limit allowed for the proposals' descriptions should be equal across the proposal types, and we feel that the current 500 word limit is insufficient in some cases and should be increased to allow greater complexity and detail.

We feel that a five percent ownership barrier for submitting a bylaw proposal that will not be subject to no-action treatment may be too high. It is our belief that this proposal type should be treated as any other bylaw proposal currently allowed.[1] The proposal merely allows all shareowners to vote on such a process. We fail to understand the rationale behind requiring such a large ownership threshold for this type of proposal when at least a majority will speak to its passage or failure. The Council of Institutional Investors' own comment letter speaks to the inability of even the aggregate of the top ten largest pension funds to submit a proposal without no-action treatment under this scenario.

Shareowners have a definite and important role to play in monitoring the management and boards of companies. Institutions bear the brunt of this role, due to their increased incentive to bear the costs of such diligent actions as investors of such large sums; however, ordinary shareowners are important as well. The SEC has historically been careful to prevent disenfranchisement in this regard with its careful weighing of issues such as e-proxy filing and broker voting of uninstructed shares. We feel the five percent threshold not only risks disenfranchisement of individuals, but even large pension funds as well, who historically have served as the proponent of a great number of the proposals that have been passed by at least a *majority* of voting shares. We disagree with dichotomous filing thresholds and treatment of this bylaw proposal compared to other types.

If the chosen filing threshold ultimately is higher than current requirements, the proxy rules should be changed to ease the burden of acquiring shareowner support as the rules relate to group formation and communication.

[1] Until 1984, ownership of a single share of stock was required to submit shareowner proposals. From 1984 through 1998, the ownership threshold required to submit shareowner proposals was raised to the lesser of 1 percent or $1,000 of stock. From 1998 to the present, the ownership threshold has been the lesser of 1 percent or $2,000 of stock.

Although a scaled ownership threshold, whereby the percentage varies according to a company's market capitalization or accelerated filing status, has some appeal, we would prefer to see a consistent threshold applied to all companies.

We support the proposed new rule 14a-17 as it applies to nominees of the shareowner only; we feel the nominees should be judged on the same information that is required currently for contested elections and in kind with that required for the nominees of management. Rule 14a-17 should not apply to disclosure of the shareowner that nominates the candidates, unless the nominating shareowner is a nominee as well. We agree that the nominating shareowner should be responsible for providing the relevant nominee information to the company, and that the nominating shareowner supply a statement of consent for nomination from each candidate.

Retain Current Resubmission Filing Thresholds
We view the current limitations on resubmission of shareowner proposals to be effective as currently structured and believe they adequately protect companies from nuisance by shareowner proposals that do not receive minimal shareholder support.[2]

Electronic Shareowner Forums
We are in favor of modifications to the rules that serve to increase the ability of management to communicate with shareowners and vice versa.

Bylaw Amendments Concerning Non-Binding Shareowner Proposals
Under no circumstance would we support a limitation on the ability of shareowners to file advisory proposals; the voting on these proposals serves many roles in communicating matters of importance to investors. Often such votes reflect widespread investor sentiment on issues that apply universally, and such votes inform management, as well as market participants, including other companies facing similar investor concerns.

We are not in favor of using an electronic petition model for non-binding proposals in lieu of Rule 14a-8. Proxy voting is required as a fiduciary requirement under ERISA, but petition signing is not. The petition process also seems likely to cut the participation rate for such non-binding proposals since it is disconnected from the proxy. The fact that totals would be reported as a fraction of total shares outstanding would further skew the support levels of the "vote" downward, as most votes are currently reported as a percentage of votes cast. Shareowners deserve the ability to present these proposals on the company's actual proxy where they will get the attention they deserve. This process is not of undue hardship to management and has not been abused by investors.

Arguments that a mandated federal approach is unnecessary due in large part to the internet, as well as increased utilization of financial intermediaries in recent years, relevance of proxy advisory services and the prevalence of published voting guidelines, do not sway us in our determination that the non-binding advisory process as currently regulated by the SEC is quite effective in giving clout to investors. Shareholders' ability to act as a group, by voting, is precisely what the existing advisory proposal process is designed to facilitate.

Other Requests for Comments
We feel that purely electronic proxies may be a reasonable alternative to the expense of running a traditional contest and may lower barriers for conducting election contests, but seems to be outside the scope of the proposal. We believe that shareowners should have access to the company's proxy, to have their nominees alongside company nominees, under specific conditions delineated in a shareowner-approved bylaw.

We feel additional amendments for reporting beneficial ownership and voting interests would be quite helpful. The filing requirements for form 13G should be amended so that beneficial ownership is clearer, including a requirement for parties subject to such disclosure to detail ownership and any activities that provide a disconnect

[2] Rule 14a-8 precludes resubmission of shareholder resolutions if they do not receive a minimal level of support in previous proxy votes: (i) less than 3% of the vote if proposed once within the preceding 5 calendar years; (ii) less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or (iii) less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years.

between ownership levels and voting ability, as well as disconnect between ownership level and economic interests through the use of derivatives or other contracts.[3] Voting is an important shareowner right, and those that may engage in behaviors that manipulate the voting outcome relative to their ownership or economic exposure should be required to fully report these actions on their 13G filing.

Summary

The Commission's stated goals are to promote the interests of investors, the efficient functioning of the capital markets, and the health of capital formation. We feel that the present rules requiring separate proxy solicitations result in too few challenges to boards that are in need of additional monitoring. The result is a potential loss of value to investors. We feel it is in the best interests of investors and the health of the market to include the ability for shareowners to vote on reasonably limited proxy access proposals.

Proposal S7-16-07 shows it is possible to have bylaw proposals allowing shareowner nominees while still protecting investors with the information required and intended under proxy guidelines. Clearly, the two proposed rules are incompatible and seem drafted with very different philosophies in mind. We hope you will revise S7-16-07 to make such presentation of the nomination bylaw proposals less onerous on shareowners who seek more accountability from their representatives, and with revisions that do not restrict the investor rights currently enjoyed regarding the submission of proposals unrelated to such director elections or nomination processes.

We appreciate the opportunity to comment on these important issues. If you have any questions, please contact Michael McCauley, Senior Corporate Governance Officer, at (850) 413-1252 or mike.mccauley@sbafla.com, or me.

Sincerely,

Coleman Stipanovich
Executive Director

[3] Related issues were addressed by the State Board of Administration in a February 5, 2007 letter to the Commission regarding the need for additional ballot item and record date disclosure surrounding various securities lending and share borrowing practices.