Ohio Public Employees Retirement System

Via Email

October 2, 2007

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

Re: Shareholder Proposals (File Number: S7-16-07)

Dear Ms. Morris:

I am writing on behalf of the Ohio Public Employees Retirement System ("OPERS"), a public pension fund that provides retirement, disability and survivor benefit programs for public employees. OPERS serves more than 920,000 members, of which over 380,000 are active members currently working in public employment and over 200,000 are retirees and beneficiaries receiving monthly pensions and/or health benefits. More than 3,700 public employers are part of the OPERS system, including state, municipal, county and university employers. With assets currently over $80 billion, OPERS is the 11th largest public retirement system.

OPERS appreciates the opportunity to provide comments on the Securities and Exchange Commission's ("SEC" or "Commission") proposed amendments to the rules under the Securities Exchange Act of 1934 concerning shareholder resolutions and electronic shareholder communications, as well as to the disclosure requirements of Schedule 14A and Schedule 13G ("Proposed Amendments"). We appreciate the many hours of hard work that the SEC staff and Commission have devoted to the development of the Proposed Amendments.

OPERS supports the Commission's objectives of "vindicating shareholders' state law rights to nominate directors . . . and ensuring full disclosure in election contests . . . ."[1] Unfortunately, for the reasons summarized in this comment letter, OPERS does not support the Proposed Amendments as currently drafted. We are committed to working with the Commission to develop reforms that would permit meaningful shareholder access to company-prepared proxy materials relating to the nomination and election of directors. We believe these types of contests for board seats would be a rare occurrence since companies would have an incentive to be responsive to shareholder concerns. Boards would be more responsive to shareholders, more thoughtful about whom they nominate to serve as directors and more vigilant in their oversight of companies.

The Proposed Amendments would permit certain shareholders to include amendments to bylaws that would mandate procedures to allow shareholders to nominate board of director candidate in company proxy materials proposals. However, the shareholders requirements outlined in the Proposed Amendments are too burdensome. In addition, we note that the Proposed Amendments include a discussion about the potential adoption of new rules that would permit a company to propose, and its shareholders to adopt, a bylaw

[1] Shareholder Proposals, 72 Fed. Reg. at 43,469.

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restricting the ability of shareholders to offer non-binding or precatory shareholder resolutions. If such rules were adopted, we believe they would unduly restrict the use of precatory resolutions, an important and useful shareholder right, with potential negative consequences for the quality of corporate governance practices and the long-term performance of companies.

OPERS' specific concerns about the Proposed Amendments follow:

More than Five Percent Requirement

The Proposed Amendments include provisions providing that shareholder bylaw resolutions would be required to be included in the company's proxy materials if certain conditions are met.[2] Those conditions include that the proposal must be submitted by a shareholder (or group of shareholders) that has continuously and beneficially owned more than five percent of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date the shareholder submits the proposal.[3]

For an institutional investor like OPERS, we feel that the more than five percent threshold would be too high a barrier. While institutional investors may collectively own more than sixty percent of outstanding U.S. equities, OPERS has a fiduciary duty to diversify its portfolio and manage risk, the level of holdings in any single company is relatively small. For example, the average holdings by OPERS amount to only 0.173 percent of the outstanding stock of companies in the Russell 3000.

The ability to aggregate individual pension funds for a shareholder resolution is a difficult exercise. Research conducted by the Council of Institutional Investors indicates that even if CalPERS and nine of the largest public pension funds were to successfully aggregate their holdings of a single public company's securities, those funds combined would likely be unable to clear the more than five percent hurdle. For example, based on information compiled from FactSet Research Systems, Inc., if the ten largest public pension fund holders of Exxon Mobil Corporation (a large-cap stock), Precision Castparts Corp. (a mid-cap stock), and The Manitowoc Company, Inc. (a small-cap stock) were to aggregate their ownership interests, the resulting percentage holdings for those shareholder groups would be approximately 3.01, 3.59, and 3.56, respectively.

Disclosure Requirements

A second condition for submitting a shareholder bylaw resolution under the Proposed Amendments is that the shareholder or group of shareholders that submit the proposal must (1) be eligible to file a Schedule 13G; (2) actually file the Schedule 13G; and (3) include in the filed Schedule 13G the specified public disclosures regarding its background and its interactions with the company.[4]

While OPERS does not object to the imposition of appropriate filing and disclosure requirements for shareholders accessing the proxy, the level of disclosure required by the Proposed Amendments appears overly burdensome going beyond current disclosures that would be required of shareholders filing a Schedule 13D who may be attempting a hostile takeover of a company. The Proposed Amendments also appear to

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[2] Shareholder Proposals, 72 Fed. Reg. at 43,470.
[3] *Id.*
[4] Shareholder Proposals, 72 Fed. Reg. at 43,470.

require more disclosure than the level under which companies' director nominees must disclose their interests, if any, in a company that is a competitor.

As indicated above, the practical effect of the more than five percent requirement would be that numerous institutional investors would have to aggregate their holdings to form a qualifying shareholder group. To the extent that the Proposed Amendments contemplate detailed disclosures about each and every member of that group, there would be a corresponding increase in the amount of recordkeeping that would be required regarding each investor's contacts with a given company.

There would also be significant efforts required in terms of compiling the proposed disclosures into an initial Schedule 13G filing, not to mention the burden of the additional requirements that appear to be contemplated for amended Schedule 13G filings which is an extraordinary level of detailed disclosure resulting from the exercise of a fundamental shareholder right.

Precatory Proposals

Finally, the Proposed Amendments include an inquiry into whether the Commission should consider adopting new rules under which the existing federal proxy rules that govern the ability of shareholders to offer precatory proposals would be replaced by a generally more restrictive regime governed by state law and a company's governing documents.[5] The Proposed Amendments suggest that such restrictions are appropriate "in light of developments in the last 25 years that may have diminished the concerns about shareholders' ability to act as a group . . . ."[6]. We believe the developments in the last 25 years, and especially the last five years, support that a growing number of shareholders are willing to vote for and adopt precatory resolutions. We are concerned that the Proposed Amendments could hinder the ability of shareholders as a group to communicate with management and the board during the only forum each year where such communication is possible. At a time when companies are improving their corporate governance policies in response to shareholder precatory resolutions in record numbers,[7] the Proposed Amendments appear designed to inhibit shareholders from pursuing those proposals.

I appreciate the opportunity to express the views of OPERS on this matter. Please feel free to contact Carol Nolan Drake, corporate governance manager, or me with any questions at 614-222-0398. Thank you for your consideration of our comments.

Sincerely,

Chris DeRose
Executive Director

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[5] *Id.* at 43,477-78.
[6] *Id.* at 43,478.
[7] *See, e.g.,* Edward Iwata, *Boardrooms open up to investors' input*, USA Today, Sept. 6, 2007, at 1, *available at* http://www.usatoday.com/money/companies/management/2007-09-06-shareholders-fight_N.htm (Noting that a record 23% of shareholder resolutions proposed in 2007 "were withdrawn by shareowners after companies agreed to adopt new policies, or to sit down and discuss the issues").