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STATE PENSION OFFICIALS STRONGLY OPPOSE BARRIERS IN SEC'S PROPOSED PROXY ACCESS RULES

A group of eleven state and local pension fund officials representing assets of more than $640 billion today released a letter they sent to Securities and Exchange Commission Chairman William H. Donaldson expressing their opposition to the barriers to access in the proposed proxy access rules the Commission is expected to issue for comment next week. The rule will, for the first time, allow investors to nominate directors and have those nominees placed on the proxy materials that public corporations send out to all stockholders. But the rule as proposed would create severe limitations on proxy access.

The letter was signed by New York State Comptroller Alan Hevesi, California Treasurer Phil Angelides, CalPERS Board President Sean Harrigan, California Controller Steve Westly, North Carolina Treasurer Richard Moore, Pennsylvania Treasurer Barbara Hafer, Kentucky Treasurer Jonathan Miller, Iowa Treasurer Michael Fitzgerald, Oregon Treasurer Randall Edwards, Connecticut Treasurer Denise Nappier, and New York City Comptroller William Thompson.

In the letter, the officials wrote, "We are troubled that this opportunity for meaningful and lasting reform may be squandered. According to a number of credible reports, the Commission is expected to propose rules with a number of trigger requirements that will create nearly insurmountable barriers to the effective use of proxy access for major institutional shareowners such as ourselves… Our understanding of the current proposal is that it is excessively restrictive, going well beyond deterring frivolous nominations and preventing abuse by corporate raiders. In particular, the use of triggering requirements would force undue delay and could effectively render any new rules meaningless at all but a handful of companies. This would create the illusion of access and the appearance of reform without offering actual access or real reform. Any rule that does not give shareholders timely proxy rights at all companies, especially companies in crisis such as those with multiple significant financial restatements or those under SEC investigation, will be harmful."

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According to a number of reliable reports, the SEC proposed proxy access rules will include “triggers,” events that must occur before shareholders are granted access to the proxy. Such triggers could include management failing to act on a proxy resolution passed by a majority, a majority shareholder vote for proxy access, or a substantial number of shareholders withholding their vote from management nominees for director. This would set up a two-year process to permit investors to nominate directors -- meeting the trigger requirement one year and then nominating the next.

The rule is also expected to include unreasonable shareholder eligibility requirements, even for triggering events. For example, a shareholder resolution that would constitute a trigger would have to be filed with the support of at least one percent of owners. Right now to file a shareholder resolution, one only needs to own $2,000 worth of stock for one year. Then there would be a much higher ownership threshold to nominate directors.

In addition, the draft rule will likely require that shareholders’ nominees would have to be completely independent of the nominating shareholders. This would mean that a public pension fund could not nominate a business person who served on an advisory committee to the fund or an expert at an investment fund in which the pension fund had an investment. This would eliminate the main source of potential nominees with both business expertise and the confidence of institutional investors.

“This might seem like an obscure and technical issue, but it is of vital importance to every American. The wave of corporate scandals taught us we need stronger, more accountable boards of directors to prevent more scandals. Allowing shareholders, the owners of the company, to nominate directors, is one of the best ways to increase accountability and avoid scandals. The rules as proposed would make proxy access and increased accountability all but impossible,” said New York State Comptroller Alan G. Hevesi.

"The rules aren't there just to protect the portfolios of millionaires, but the retirements of millions of real people," said California State Controller Steve Westly.

"For more than a decade, shareholders have been calling on the SEC for new rules that strengthen their rights to fair corporate elections. It's time for the SEC to heed that call," said California Treasurer Phil Angelides. "In the absence of meaningful reforms, shareholders are still forced to wage costly proxy battles to nominate candidates for corporate boards, but management is allowed to campaign for its slate of candidates at company expense. In the wake of the corporate scandals of the past couple of years, it is time to enact a shareholders' bill of rights."

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"While moving quickly on this issue of proxy access is of great importance, and we appreciate the SEC's willingness to do so, it is important the rule be meaningful and bring about real reform," said North Carolina State Treasurer Richard Moore. "I believe large public institutional investors have a unique perspective to share with the SEC before they release the rule."

"As a member of three state pension boards with more than $75 billion in investments, I agree with the Coalition position that major investors, as shareholders, are owners and should have the right to nominate candidates for board directors without undue restrictions," Pennsylvania Treasurer Barbara Hafer said. "For more than 16 months, I have been calling for action by the federal government and Wall Street to restore confidence and to allow more independence and diversity on corporate boards. Giving major shareholders a real role in nominating truly independent directors is an essential step toward that goal."

"If the set of rules are weighed down with a long list of restrictions, it will turn investors' voices into nothing more than a whimper. Triggers have the potential for creating brick walls that will keep our voices silent. If we had triggers of the kind being contemplated, we would just be getting to nominating new directors for the Enron board two years after the first scandal erupted. That's not a day late and a dollar short. That would have been two years late, and billions squandered. We have all seen too many Enrons, Worldcoms and even enough Tycos. This rule making package is not meaningful reform if it doesn't open a reasonably sized door to give investors the power to hold directors accountable," said Sean Harrigan, President of the Board of CalPERS.

"The Securities and Exchange Commission, under the leadership of Chairman Donaldson, has taken positive steps to improve corporate governance and accountability on the boards of publicly traded companies," New York City Comptroller William C. Thompson, Jr. said. "The SEC must stay that course by creating a proxy access rule. Shareholders -- the real owners of public corporations -- must have the right to participate fully in the nomination of candidates in board elections. Proxy access must not be restricted to only very limited situations. Amid the climate of investor mistrust of corporate boards, the unintended consequence would be the creation of a major roadblock to the restoration of investor confidence in the governance of publicly traded companies."

"Nearly half of Americans now have investments in the stock market, whether through their individual 401(k) or pension," said Kentucky Treasurer Jonathan Miller. " "We need active independent boards of directors who are responsive and accountable, as well as, active and involved shareholders. This is a key defense against corporate corruption. It's our goal here to be sure it's not just the barons of Wall Street who are being represented, but the retired teachers in Paducah, Ky. and the police officers in Eugene, Ore., and the farmers in Des Moines, Iowa."

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October 1, 2003

Mr. William Donaldson
Chairman
United States Securities and Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549

Dear Chairman Donaldson:

We are managers and fiduciaries of the largest pension funds in the United States. We are writing to you regarding the proposed rule on proxy access that the Commission will be issuing soon. We are gratified that, under your leadership, the Commission has recognized the importance of addressing this issue now. But we are also very concerned about what we have heard about the specifics of the proposed rule.

The proposed rule should, for the first time, allow long-term investors to nominate directors and have those nominees placed on the proxy materials that public corporations send out to all stockholders. The new rule must provide a mechanism that shareholders can use to place board nominees on the proxy ballot each time there is an election of directors. Only then can shareholders hold individual directors and the board as a whole accountable for their actions.

Certainly we have learned from the recent wave of corporate corruption scandals the importance of independent, active and accountable boards of directors. Allowing investors access to the company proxy card to nominate directors will encourage all corporations to improve the quality and increase the responsiveness of their boards of directors. This should result in increased accountability of both boards of directors and managers.

We are troubled that this opportunity for meaningful and lasting reform may be squandered. According to a number of credible reports, the Commission is expected to propose rules with a number of trigger requirements that will create nearly insurmountable barriers to the effective use of proxy access for major institutional shareowners such as ourselves. We understand the need for some reasonable threshold that ensures that proxy access is available to long-term investors and does not become a cheap route for corporate raiders. Our issue is accountability, not control.

Our understanding of the current proposal is that it is excessively restrictive, going well beyond deterring frivolous nominations and preventing abuse by corporate raiders. In particular, the use of triggering requirements would force undue delay and could effectively render any new rules meaningless at all but a handful of companies. This would create the illusion of access and the appearance of reform without offering actual access or real reform. Any rule that does not give shareholders timely proxy rights at all companies, especially companies in crisis such as those with multiple significant financial restatements or those under SEC investigation, will be harmful. Clearly, any rule with numerous triggers and restrictions that uniformly delays access beyond the next annual meeting is not an acceptable formulation.

The principle is clear. Shareholders are the owners. If we, as representatives of shareholders, wish to nominate candidates for director on the company proxy card, we should have that right. It is not reasonable or fair that incumbent boards have unlimited access to the corporate treasury, while owners bear costs of hundreds of thousands of dollars, if not millions, to contest the choices of failed boards. As fiduciaries of some of the largest public funds, we would use proxy access not to seek corporate control, but rather to help reform companies that have failed to live up to their obligations to their owners. Under current rules, however, the cost of intervention by means of shareholder nominations is prohibitively expensive.

Competition for board seats and the accountability that contested elections impose will raise standards for those who serve as directors. It is also likely that the pool of available board candidates will be expanded, bringing more diversity and expertise to boards. Limited proxy access rules will serve only those companies that fear having truly independent boards.

There is no good reason for the SEC to restrict our right. If proxy access rules are drafted that do not allow challenges to ineffective boards, then a powerful opportunity for correcting fundamental problems in board governance will have been lost.

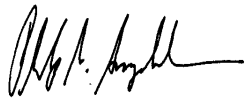
Corporate scandals inflicted a huge price not only on the individual companies, their employees and shareholders, but also on all investors and all Americans. The cost amounts to hundreds of billions of dollars and translates into millions of people whose standard of living has been lowered. We cannot allow this to happen again. Clearly, active independent boards of directors and active and involved shareholders are extremely effective defenses against corporate corruption. That is why we believe it is essential that proxy access rules provide a real opportunity for long-term investors to challenge boards that are unresponsive and unaccountable.

We would appreciate the opportunity to meet with you immediately on this very urgent matter, before this historical window of shareholder opportunity closes. May we impose on you to have your staff contact Julie Gresham at (212) 681-4480 so that we may make an appointment to meet?

Sincerely,

Alan G. Hevesi
Comptroller
State of New York

William C. Thompson
Comptroller
City of New York



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