

October 8, 2003

SEC Votes to Propose Rules on Proxy Access for Shareholder Nominees

The SEC voted today to propose rules that would permit shareholders, subject to specified conditions, to use a company's proxy statement to nominate their own candidates for director. The SEC expects to publish the full text of the proposed rules within the next few days and to solicit comments on the proposals for a 60-day period following their publication.

A company would be subject to the requirement to include shareholder nominees in its proxy statement for a two-year period following the occurrence of one of the following two triggering events:

- more than 35% of the company's shareholders withhold votes for one or more candidates for director; or
- a shareholder resolution to activate the access process receives a majority of the votes cast by the company's shareholders.

Once a triggering event occurs, then a shareholder or group of shareholders that has held at least 5% of the company's shares for at least two years would be able to propose nominees to be included in the company's proxy statement. The maximum number of nominees a company must include would vary from one to three, depending on the size of its board. For most companies – those whose board size is from 9 to 19 – the maximum would be two nominees. Triggering events would begin to apply January 1, 2004. Thus, if the proposed rules are adopted, shareholders could qualify to use a company's proxy statement to nominate directors as early as shareholder meetings held in 2005.

Shareholder nominees to be included in a company's proxy statement could not be affiliated with or receive fees from the nominating shareholder and would be required to meet the independence standards for directors set forth by the applicable stock exchange or listing body. A nominating shareholder could not have any agreement with the company regarding the nomination on the company proxy and must be eligible to file on Schedule 13G. The proposed rules would apply to any company subject to the proxy rules that is incorporated in a state that allows shareholders to nominate directors, including Delaware and New York. It would not apply to foreign companies.

As we have stated before, we believe that giving shareholders the ability to run an election contest through a company's proxy statement would be a serious mistake. Others who agree may wish to make their views known during the SEC's comment period on these proposed rules.

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