

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release Nos. 34-48301; IC-26145; File No. S7-14-03]

RIN 3235-A190

Disclosure Regarding Nominating Committee Functions and Communications Between Security Holders and Boards of Directors

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing new disclosure requirements and amendments to existing disclosure requirements to enhance the transparency of the operation of boards of directors. Specifically, we are proposing enhancements to existing disclosure requirements regarding the operation of board nominating committees and a new disclosure requirement concerning the means, if any, by which security holders may communicate with members of the board of directors. These proposed disclosure requirements would not mandate any particular action by a company or its board of directors; rather, the proposals are intended to make more transparent to security holders the operation of the boards of directors of the companies in which they invest.

DATES: Comments should be received on or before September 15, 2003.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by one method—U.S. mail or electronic mail—only. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments also may be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7-14-03. This number should be included in the subject line if sent via electronic mail. Electronically submitted comment letters will be posted on the Commission's Internet Web site (<http://www.sec.gov>). We do not edit personal information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT:

Lillian K. Cummins, at (202) 942-2900, Andrew Thorpe at (202) 942-2910, or

Grace K. Lee, at (202) 942-2900 in the Division of Corporation Finance, or with respect to investment companies, Christian L. Broadbent, Senior Counsel, Division of Investment Management, at (202) 942-0721, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549-0402.

SUPPLEMENTARY INFORMATION: We are proposing amendments to Items 7 and 22 of Schedule 14A¹ under the Securities Exchange Act of 1934.² Although we are not proposing amendments to Schedule 14C³ under the Exchange Act, the proposed amendments will affect the disclosure provided in Schedule 14C, as Schedule 14C requires disclosure of some items of Schedule 14A.

I. Introduction

A. Review of the Proxy Rules Regarding Procedures for the Election of Directors

On April 14, 2003, the Commission directed the Division of Corporation Finance to formulate possible changes in the proxy rules regarding procedures for the election of corporate directors.⁴ On May 1, 2003, the Commission solicited public views on the Division's review of the proxy rules relating to the nomination and election of directors.⁵ The majority of commenters supported the Commission's decision to direct this review.⁶ Reflecting concern over the accountability of corporate directors and recent corporate scandals, commenters generally urged the Commission to adopt rules that would grant security holders greater access to the nomination process and greater ability to exercise their rights and responsibilities as owners of their companies.⁷ In addition, many of those commenters noted that current director nomination procedures afford little meaningful opportunity for participation or oversight by security holders.⁸

Many of the comments received in connection with the Division's review

evidence a growing concern among security holders that they lack sufficient input into decisions made by the boards of directors of the companies in which they invest.⁹ Two particular areas of concern regard the nomination of candidates for election as directors and the ability of security holders to communicate effectively with members of the board of directors.¹⁰

B. Current Disclosure Regarding Nominating Committees and Security Holder Communications With Boards of Directors

In 1977, the Commission undertook a thorough review of security holder communications, security holder participation in the corporate electoral process, and corporate governance generally. The Commission solicited written comment and held hearings as part of that review. While an important focus of the hearings was security holder access to company proxy materials, the Commission also requested comment on whether more disclosure related to the nominating process and nominating committees would be appropriate.¹¹

In response to the Commission's 1977 request, commenters recommended that nominating committees be required to consider security holder nominees, that outside directors comprise all or a majority of nominating committees,¹² and that security holders be advised of "the existence and purpose of such committee and its standards for director qualifications."¹³ Commenters favoring these requirements indicated their view that they would encourage security holders to contact nominating committee members with their

⁹ See *id.*

¹⁰ The Division's review also addressed the issue of security holders' ability to access company proxy materials for purposes of nominating candidates for election as directors. The Commission expects that its proposals regarding this significant issue will be included in a separate release published this fall. As such, this proposing release does not address that issue directly. The Division's Staff Report to the Commission, detailing the results of its review of the proxy process related to the nomination and election of directors, can be found on the Commission's Web site at <http://www.sec.gov>. [Staff Report: Review of the Proxy Process Regarding the Nomination and Election of Directors, Division of Corporation Finance (July 15, 2003)].

¹¹ See Release Nos. 34-13482 (April 28, 1977) [42 FR 23901] and 34-13901 (August 29, 1977) [42 FR 44860].

¹² See Re-Examination of Rules Relating to Security Holder Communications, Security Holder Participation in the Corporate Electoral Process and Corporate Governance Generally, Summary of Comments (1978), at 65.

¹³ *Division of Corporation Finance, Securities and Exchange Comm'n, Staff Report on Corporate Accountability* (Sept. 4, 1980) (printed for the use of Senate Comm. on Banking, Housing, and Urban Affairs, 96th Cong., 2d Sess.), at A54.

¹ 17 CFR 240.14a-101.

² 15 U.S.C. 78a *et seq.*

³ 17 CFR 240.14c-101.

⁴ See Press Release No. 2003-46 (April 14, 2003).

⁵ See Release No. 34-47778 (May 1, 2003) [68 FR 24530]. In addition to receiving written comments, the Division spoke with a number of interested parties representing security holders, the business community, and the legal community. Each of the comment letters received, memoranda documenting the Division's meetings, and a summary of the comments are included on the Commission's Web site, <http://www.sec.gov>, in comment file number S7-10-03. [Summary of Comments in Response to the Commission's Solicitation of Public Views Regarding Possible Changes to the Proxy Rules (July 15, 2003)].

⁶ See 2003 Summary of Comments.

⁷ See *id.*

⁸ See *id.*