

identifying and evaluating candidates, which we expect will generally be executive search firms, provides important information as to the process followed by a company. In the absence of these specific proposed disclosure requirements, we believe that disclosure could be at a level of generality that would not be sufficiently helpful to security holders in understanding the nominating process.

We also believe that it is important for security holders to understand the application of the nominating processes specifically to candidates put forward by security holders. The ability to participate in the nominating process is an important matter for security holders.³⁷ Disclosure as to whether and how they may participate in a company's nominating process, and the manner in which security holder candidates are evaluated, including differences between how they are evaluated and other candidates are evaluated, therefore represents important information for security holders. Specific disclosure requirements regarding the treatment of candidates put forward by large security holders or groups of security holders that have a long-term investment interest are appropriate, given the particular concerns of these investors as to how they might participate in the nominating process. Again, we believe that specific detailed disclosure requirements are necessary and appropriate to assure the desired degree of clarity and transparency regarding these matters, and that more general requirements may not achieve our desired objective.

3. Interaction of the Proposed Disclosure Requirements With Proposed Listing Standard Amendments of the Markets

The New York Stock Exchange and the Nasdaq Stock Market have proposed revised listing standards that would require listed companies to have independent nominating committees.³⁸ While these proposed listing standard changes demonstrate the importance of the nominating process and the nominating committee, and represent a strengthening of the role and independence of the nominating

committee, they would not require nominating committees to consider security holder nominees or companies to make the disclosures described above. The disclosure requirements we propose today would provide useful information to security holders regarding the nominating process, the manner of evaluating nominees, and the extent to which the boards of directors of the companies in which they invest have a process for considering, and do in fact consider, security holder recommendations. Accordingly, the proposed disclosure requirements would operate in conjunction with any proposed listing standards regarding nominating committees that are adopted.

In response to our solicitation of input into the proxy review by the Division of Corporation Finance, a number of commenters from the business community and their advisors made clear their view that the proposed listing standards regarding nominating committees represent a significant strengthening of the nominating process and should be allowed to take effect and operate before we take any further action regarding the election of directors.³⁹ Nearly 25 years have passed since the adoption of our disclosure requirements regarding nominating committees. The many comments reflecting a continued lack of security holder access to the director nomination process and security holder dissatisfaction with that process⁴⁰ are evidence that the promise of those earlier amendments has not been realized. As such, it is appropriate to consider those additional, constructive steps that we can now take to complement any proposed listing standards that are adopted. We believe that the disclosure requirements we propose today are appropriate steps in this process. We also believe that consideration must be given to additional security holder access to the proxy process in connection with the election of directors, as will be discussed further in a proposing release that we expect to publish this fall.

4. Questions Regarding Enhanced Nominating Committee Disclosure

1. Would increased disclosure related to the nominating committee and its policies and criteria for considering nominees be an effective means to increase security holder understanding of the nominating process, board accountability, board responsiveness, and corporate governance policies?

2. (a) If so, do the proposed specific disclosure standards, including those in each of the following areas, provide security holders with useful information that provides an understanding of a company's nominating process:

- The existence of a nominating committee;
- The nominating committee charter, if any;
- Compliance with applicable nominating committee independence requirements;
- The process for identifying and evaluating candidates;
- The qualifications and standards for director nominees;
- The source of candidates other than those standing for re-election; and
- The involvement of third parties receiving compensation for identifying and evaluating candidates?

(b) If so, do the proposed specific disclosure standards, including those in each of the following areas, provide security holders with useful information that provides an understanding of the ability of security holders to participate in the nominating process:

- Policies for consideration of security holder candidates;
- Procedures for submission of security holder candidates; and
- Specific information regarding consideration of candidates submitted by large, long-term security holders or groups of security holders?

3. As noted above, the proposed disclosure requirements are intended to provide security holders with detailed, specific information that we believe is important. Are there alternative means to better achieve our objective? For example, would it be more appropriate to include a broader, less detailed disclosure standard? Would any of the detailed disclosure requirements within the proposed standard result in disclosure that is unnecessarily detailed for the purpose of providing security holders with useful information regarding the management of the companies in which they invest? If so, describe specifically the basis for that conclusion.

4. We propose to require disclosure of the material terms of the nominating committee charter. Instead of requiring companies to disclose the material terms of the charter, should we require that the company attach the nominating committee charter to the proxy statement? If so, should companies be required to attach it every year? Should we require that the charter be filed with the Commission? Should we require disclosure of any (or only material) amendments to the charter? Does Web site disclosure provide sufficient access

³⁷ See *id.*

³⁸ See Release No. 34-47672 (April 11, 2003) and Release No. 34-47516 (March 17, 2003). While the NYSE proposal includes an absolute requirement that listed companies have an independent nominating committee, the proposed Nasdaq standards provide that the nomination of directors may, alternatively, be determined by a majority of the independent directors. In discussing the NYSE and Nasdaq proposals, our references to independent nominating committees encompass this alternative under the Nasdaq proposal.

³⁹ See 2003 Summary of Comments.

⁴⁰ See *id.*