

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240, 249 and 274

[Release Nos. 34-48626; IC-26206; File No. S7-19-03]

RIN 3235-A193

Security Holder Director Nominations

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing new rules that would, under certain circumstances, require companies to include in their proxy materials security holder nominees for election as director. These proposed rules are intended to improve disclosure to security holders to enhance their ability to participate meaningfully in the proxy process for the nomination and election of directors. The proposed rules would not provide security holders with the right to nominate directors where it is prohibited by state law. Instead, the proposed rules are intended to create a mechanism for nominees of long-term security holders, or groups of long-term security holders, with significant holdings to be included in company proxy materials where there are indications that security holders need such access to further an effective proxy process. This mechanism would apply in those instances where evidence suggests that the company has been unresponsive to security holder concerns as they relate to the proxy process. The proposed rules would enable security holders to engage in limited solicitations to form nominating security holder groups and engage in solicitations in support of their nominees without disseminating a proxy statement. The proposed rules also would establish the filing requirements under the Securities Exchange Act of 1934 for nominating security holders.

DATES: Comments should be received on or before December 22, 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. S7-19-03. 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 C. Brown or Grace K. Lee, Division of Corporation Finance, at (202) 824-5250, or, with regard to investment companies, John M. Faust, 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 new Rule 14a-11¹ and amendments to Rules 13a-11,² 13d-1,³ 14a-4,⁴ 14a-5,⁵ 14a-6,⁶ 14a-8,⁷ 14a-12,⁸ 15d-11⁹ and 16a-1,¹⁰ Schedules 13G¹¹ and 14A,¹² and Forms 8-K,¹³ 10-Q,¹⁴ 10-QSB,¹⁵ 10-K¹⁶ and 10-KSB¹⁷ under the Securities Exchange Act of 1934,¹⁸ and Forms N-CSR¹⁹ and N-SAR²⁰ under the Securities Exchange Act of 1934 and the Investment Company Act of 1940.²¹ Although we are not proposing amendment to Schedule 14C²² under the Exchange Act, the proposed amendments would 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 and Regulations Regarding Procedures for the Election of Directors

On April 14, 2003, the Commission directed the Division of Corporation Finance to review the proxy rules and regulations and their interpretations

regarding procedures for the nomination and election of corporate directors.²³ On May 1, 2003, the Commission solicited public input with respect to the Division's review.²⁴ Commenters generally supported the Commission's decision to review the proxy rules and regulations with respect to director nominations and elections. Reflecting concern over corporate scandals and the accountability of corporate directors, many commenters urged the Commission to adopt rules that would provide security holders with greater access to the nomination process and the ability to exercise their rights and responsibilities as owners of their companies.²⁵ In addition, many of those commenters alleged that the current director nomination procedures afford little meaningful oversight to security holders and expressed a growing frustration at security holders' lack of ability to influence the membership of the boards of directors of the companies in which they invest.²⁶

On July 15, 2003, after considering the views expressed by commenters, the Division of Corporation Finance provided to the Commission its report and recommended changes to the proxy rules related to the nomination and election of directors.²⁷ To best address many of the issues raised by commenters, the Division recommended proposed changes in two areas—disclosure related to nominating committee functions and security holder communications with boards of directors and enhanced security holder access to the proxy process relating to the nomination of directors.²⁸

On August 14, 2003, we published for comment proposed rules that would implement the first of the Division's recommendations—new disclosure standards requiring more robust disclosure of the nominating committee processes of public companies, including the consideration of

²³ See Press Release No 2003-46 (April 14, 2003).

²⁴ 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)].

²⁵ See 2003 Summary of Comments.

²⁶ See *id.*

²⁷ See Staff Report: Review of the Proxy Process Regarding the Nomination and Election of Directors, Division of Corporation Finance (July 15, 2003).

²⁸ See *id.*

¹ 17 CFR 240.14a-11.

² 17 CFR 240.13a-11.

³ 17 CFR 240.13d-1.

⁴ 17 CFR 240.14a-4.

⁵ 17 CFR 240.14a-5.

⁶ 17 CFR 240.14a-6.

⁷ 17 CFR 240.14a-8.

⁸ 17 CFR 240.14a-12.

⁹ 17 CFR 240.15d-11.

¹⁰ 17 CFR 240.16a-1.

¹¹ 17 CFR 240.13d-102.

¹² 17 CFR 240.14a-101.

¹³ 17 CFR 249.308.

¹⁴ 17 CFR 249.308a.

¹⁵ 17 CFR 249.308b.

¹⁶ 17 CFR 249.310.

¹⁷ 17 CFR 249.310b.

¹⁸ 15 U.S.C. 78a *et seq.*

¹⁹ 17 CFR 249.331 and 17 CFR 274.128.

²⁰ 17 CFR 249.330 and 17 CFR 274.101.

²¹ 15 U.S.C. 80a *et seq.*

²² 17 CFR 240.14c-101.