

commenters supported our decision to direct the review and, reflecting concern over corporate director accountability and recent corporate scandals, generally urged us 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.<sup>23</sup> Many of the comments received in connection with the Division's review evidenced 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.<sup>24</sup> Two particular areas of concern related to the nomination of candidates for election as director and the ability of security holders to communicate effectively with members of boards of directors.<sup>25</sup> We seek to address these concerns with the new disclosure standards we are adopting today.

## II. New Disclosure Requirements

### A. Disclosure Regarding Nominating Committee Processes

#### 1. Discussion

We are adopting new proxy statement disclosure requirements that will provide greater transparency regarding the nominating committee and the nomination process.<sup>26</sup> This enhanced

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 ("Summary of Comments") may be found in File No. S7-10-03 and on our Web site, <http://www.sec.gov>. Summary of Comments in Response to the Commission's Solicitation of Public Views Regarding Possible Changes to the Proxy Rules (July 15, 2003).

<sup>23</sup> See Summary of Comments—File No. S7-10-03.

<sup>24</sup> See *id.*

<sup>25</sup> See *id.*

<sup>26</sup> Prior to the effectiveness of these amendments, companies must disclose whether they have a nominating committee and, if so, whether that committee considers nominees recommended by security holders and how any such recommendations may be submitted. See Paragraphs (d)(1) and (d)(2) of Item 7 of Exchange Act Schedule 14A. See also Release No. 34-15384 (December 6, 1978) [43 FR 58522], in which the Commission adopted these disclosure standards. In the 1978 release proposing these disclosure requirements, the Commission stated generally its belief that the new disclosure requirements would facilitate improved accountability and, more specifically, that:

[I]nformation relating to nominating committees would be important to security holders because a nominating committee can, over time, have a significant impact on the composition of the board and also can improve the director selection process by increasing the range of candidates under consideration and intensifying the scrutiny given to their qualifications. Additionally, the Commission believes that the institution of nominating committees can represent a significant step in

disclosure is intended to provide security holders with additional, specific information upon which to evaluate the boards of directors and nominating committees of the companies in which they invest. Further, we intend that increased transparency of the nomination process will make that process more understandable to security holders. In particular, we are adopting a number of specific and detailed disclosure requirements because we believe that disclosure in response to each of these requirements will assist security holders in understanding each of the processes and policies of nominating committees and boards of directors regarding the nomination of candidates for director.

Detailed disclosure regarding nomination processes will provide security holders with important information regarding the management and oversight of the companies in which they invest. The specific disclosure requirements we are adopting today will cause companies to provide security holders with that information. We believe that specific, detailed disclosure requirements are necessary and appropriate to assure that investors are provided with disclosure that presents the desired degree of clarity and transparency. In the absence of these specific disclosure requirements, we believe that disclosure could be at a level of generality that would not be sufficiently useful to security holders.

Each of the requirements we are adopting today furthers the goal of providing the transparency that is necessary for security holders to understand the nomination process. For example, the rules we are adopting requiring disclosure of the following matters are necessary to give security holders a more complete overview of the nomination process for directors of the companies in which they invest:

- A company's determination whether to have a nominating committee;
- The nominating committee's charter, if any;
- The nominating committee's processes for identifying and evaluating candidates; and
- The minimum qualifications for a nominating committee-recommended nominee and any qualities and skills that the nominating committee believes are necessary or desirable for board members to possess.

increasing security holder participation in the corporate electoral process, a subject which the Commission will consider further in connection with its continuing proxy rule re-examination.

Release No. 34-14970 (July 18, 1978) [43 FR 31945].

In addition, as noted in the proposing release,<sup>27</sup> we believe that information as to whether nominating committee members are independent within the requirements of listing standards applicable to a company is meaningful to security holders in evaluating the nomination process of a company, how that process works, and the seriousness with which the nomination process is considered by a company. Further, information regarding the persons who recommended each nominee and disclosure as to whether there are third parties that receive compensation related to identifying and evaluating candidates will provide important information as to the process followed by a company.

The ability to participate in the nomination process is an important matter for security holders.<sup>28</sup> Accordingly, we believe that it is important for security holders to understand the specific application of the nomination processes to candidates put forward by security holders. Disclosure as to whether and how they may participate in a company's nomination process, and the manner in which their candidates are evaluated, including differences between how their candidates and how other candidates are evaluated, therefore, represents important information for security holders. Finally, an additional, specific disclosure requirement regarding the treatment of candidates put forward by large security holders or groups of security holders that have a long-term investment interest is appropriate, as it will provide investors with information that is useful in assessing the actions of the nominating committee.

#### 2. Disclosure Requirements

The amendments we are adopting today will expand the current proxy statement disclosure regarding a company's nominating or similar committee to include:

- A statement as to whether the company has a standing nominating committee or a committee performing similar functions<sup>29</sup> and, if the company does not have a standing nominating committee or committee performing similar functions, a statement of the basis for the view of the board of directors that it is appropriate for the company not to have such a committee and identification of each director who

<sup>27</sup> See Release No. 34-48301 (August 8, 2003).

<sup>28</sup> See Release No. 34-14970 (July 18, 1978). See also Summary of Comments "File No. S7-10-03 and Summary of Comments "File No. S7-14-03.

<sup>29</sup> As noted earlier in this release, this disclosure currently is required under Paragraph (d)(1) of Item 7 of Exchange Act Schedule 14A.