Georgeson Shareholder

VIA ELECTRONIC DELIVERY

April 12, 2004

Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549

Re: File No. S7-19-03
Release No. 34-48626
Security Holder Director Nominations

To the Commission:

This letter is submitted on behalf of Georgeson Shareholder Communications Inc. It supplements the comments and recommendations in our letter dated December 12, 2003 and my comments at the Security Holder Director Nominations Roundtable convened by the Securities and Exchange Commission (the Commission) on March 10, 2004. The purpose of this letter is to focus the Commission's attention on weaknesses in the proxy process and to recommend actions that could be taken to protect shareholder voting rights if the Commission decides to adopt Rule 14a-11 either as proposed or in amended form.

We believe that the proxy system in its current configuration is inadequate to handle the demands that would result from adoption of proposed Rule 14a-11. We urge the Commission to conduct a review of proxy voting mechanics and back office procedures for the purpose of reducing complexity, increasing transparency, eliminating inefficiencies and lowering costs, thereby improving corporate governance and enhancing the rights of both shareholders and issuers under the proxy rules. We believe a review of the proxy system is timely and should be undertaken whether or not the Commission adopts proposed Rule 14a-11.

Background

We make this recommendation based on our firm's many years of experience as a direct participant in the proxy process. Georgeson has been providing proxy solicitation services to publicly traded companies since 1935. The firm has been the industry leader for nearly 70 years and has conducted more proxy solicitations and shareholder response transactions than any other organization. Georgeson pioneered many proxy-related services, such as investor relations, shareholder identification, stock surveillance and corporate governance consulting, and was the first firm to offer its services on a global basis. Today Georgeson and its parent company, Computershare Ltd., provide thousands of companies around the world with comprehensive shareholder-related services ranging from record keeping and stock administration to transaction services and strategic consulting on governance, shareholder activism and contests for control.

Just-Vote-No Campaigns and Mini-Contests

We believe adoption of proposed Rule 14a-11 would accelerate the proliferation of hybrid solicitations that differ substantially from traditional election contests. These new proxy fights are likely to take a variety of forms, such as the already familiar "withhold" solicitations against directors, "just-vote-no" solicitations against management proposals, as well as independent campaigns in support of shareholder proposals. Rule 14a-11 contemplates short-slate campaigns on behalf of shareholder-nominated candidates for the board, but it could also give rise to new forms of "amicus" campaigns in which shareholders conduct third-party solicitations in support of shareholder nominees or against incumbent directors. There might also be competing solicitations by shareholder groups in support of candidates who lost their bid for places on the management proxy under Rule 14a-11. Indeed, the variety of potential solicitations under Rule 14a-11 is limited only by the creativity of activists and dissidents.

With or without Rule 14a-11 these hybrid campaigns and mini-contests are qualitatively distinct from traditional election contests. An important difference is the one-sided nature of a just-vote-no campaign or any other campaign waged to influence votes cast on the company proxy card but not seeking voting authority. In a traditional proxy contest the combatants must present arguments on two fronts — (1) analyzing and criticizing their opponent's record and credibility; (2) presenting their own plan to increase shareholder value. A just-vote-no solicitation requires only half this effort. It is an attack campaign pure and simple, permitting its proponent to criticize the incumbents without undertaking the more substantive task of presenting a strategic plan for the business. Despite this limitation, a negative campaign can have substantial impact. It attracts support by tapping into shareholders' frustrations and their desire to punish a company that underperforms the market or whose board takes a politically incorrect stand on governance or policy matters. By forcing incumbents into a defensive posture while allowing attackers to avoid taking a stand on complex strategic questions, it is an attractive model for power politics.

We have no objection in principle to just-vote no campaigns or mini-contests, nor do we contend that they are an inappropriate means for shareholders to exercise their rights. Our concern is with the practical impact these increasingly popular shareholder initiatives will have on the U.S. proxy system. For the reasons set forth below, we believe the current proxy system is too complicated, slow, costly and imprecise to handle a substantial increase in contested solicitations. Further, we are concerned that the proxy system cannot provide the transparency and reliability needed to ensure fairness and to withstand the legal challenges that will inevitably arise as these campaigns are increasingly used to influence corporate policies and to elect directors.

There are already warning signs. During the past few months just-vote-no campaigns have been waged at several prominent companies. The success of these initiatives and the publicity surrounding them lend credibility to our prediction that these tactics will proliferate at an accelerated rate. Recent events also support our concern that the proxy system is not capable of supporting these activities. A recent decision of the Court of Appeals for the Second Circuit[1] brings into question the right of just-vote-no proponents to distribute the company proxy card with their solicitation materials under the Rule 14a-2(b)1 exemption. The conflicting views of regulators and the courts on this issue and the arbitrary policy reversals and inconsistent practices seen in recent campaigns send a clear signal that the proxy system does not yet have reliable procedures in place to fairly govern the conduct of just-vote-no solicitations. Uncertainty about such basic procedures as distribution of proxy forms, which are central to the access rights in proposed Rule 14a-11, reinforces fears that adoption of the rule could lead to serious disruption in the proxy system. We believe there will be many more court cases challenging the fairness and

[1] See press release of The MONY Group Inc. dated April 1, 2004 in schedule 14A filed by the MONY Group at www.SEC.gov.

validity of proxy procedures unless changes are made to the system before the proposed rule becomes effective.

In our December 12 letter we listed some areas where legal challenges to proxy procedures are likely. These include: the inaccuracy of share records; the design and function of a universal proxy ballot or voting instruction form; confusion surrounding customary procedures authorizing shareholders to sign and vote proxies in blank; the availability of discretionary broker voting under New York Stock Exchange Rule 452; inadequate tabulation and cure procedures; insufficient review and inspection rights; lack of transparency in back office voting records. The uncertainties surrounding many aspects of proxy operations could provide fertile ground for legal challenges. Even worse, they would increase the likelihood of widespread shareholder confusion if new rules were imposed without adequate preparation and a program of investor education. We think the Commission should make every effort to deal with these procedural issues before allowing Rule 14a-11 to take effect.

In light of these warning signs and the many other practical concerns expressed in public comments about proposed Rule 14a-11, we urge the Commission to undertake a review of the proxy system that would focus on the system's two major structural weaknesses.

1. The proxy system is overly complex. Many different factors contribute to the complexity of the proxy system. First, the regulatory scheme involves a mix of federal and state law, SRO rules and private contractual agreements. These arrangements provide flexibility but weaken accountability. Second, the system is 70 years old. Although updated sporadically, it is in need of an overhaul. Like the Internal Revenue Code, the proxy rules have evolved accretively, with amendment upon amendment creating an overly complicated regulatory network that is difficult to understand and administer. Third, the proxy rules have not kept up with fundamental changes in the stock market and the shareholder population. The original rules, focused on disclosure and the protection of small shareholders, did not contemplate the rise of pension funds, mutual funds and other pooled investments run by professional managers and fiduciaries that have largely replaced individual investors in today's market. Preoccupation with small investors has distracted attention from the distinct problems created by institutional investors, their agents and the entire back office infrastructure that supports their activities. Fourth, the proxy rules embody contradictory goals of transparency and investor privacy. Disclosure and privacy don't mix well. Many features of the proxy system's cumbersome and costly infrastructure result directly from these competing mandates that require companies to communicate with all investors in a timely manner while encouraging shareholders to conceal their identity through elaborate custodial arrangements. The resulting game of hide-and-seek is inefficient, costly and burdensome to both investors and companies.

The complexity that ensues from this regulatory schizophrenia is evident particularly in the following areas of the proxy rules. (1) The NOBO/OBO rules created an elaborate and expensive infrastructure administered by a monopoly service provider for the purpose of giving shareholders a privacy option while not shutting the door completely on issuers' need to know their owners' identity. (2) The 1992 proxy rule changes that lifted restrictions on shareholders but not on companies created a regulatory imbalance that continues to inhibit communications and public dialogue between issuers and investors during proxy solicitations. This was evident in the refusal of companies to engage in face-to-face debates with shareholders in public forums sponsored by Institutional Shareholder Services and Glass-Lewis during two recent just-vote-no campaigns. (3) Rule 14a-8, the shareholder proposal rule, whose reform in 1997 was aborted following a highly politicized campaign on behalf of small investors and special interest groups, continues to burden the Commission staff and cause uncertainty and frustration among issuers and shareholders alike.

In addition, it is worth noting that other wrinkles in the complex landscape of proxy voting, such as election of directors by plurality vote under state law and broker discretionary voting under NYSE Rule 452, need to be carefully considered before proposed Rule 14a-11 is adopted. These are discussed in greater detail in our December 12 letter.

2. The proxy system is not transparent. Even though the proxy process is the primary mechanism of corporate disclosure and governance, it is itself a black box. More appropriately, it can be described as a series of black boxes, one inside another, representing successive layers of service providers and support operations. These include investment advisors, depositories, custodians, subcustodians, brokers, clearing agents, intermediaries, voting agents and proxy advisors, whose combined activities constitute the largely unsupervised operations at the heart of the proxy system. These back office machinations are off limits to everyone, including in many respects the beneficial owners whose interest they are designed to serve.

Ironically, issuers are assumed to be solely responsible for the conduct of proxy operations. This assumption is implicit in a regulatory scheme that holds issuers responsible for disclosure and requires them to pay all the costs connected with communications and proxy voting, including the charges of intermediaries whose services are actually rendered to investors, not to issuers. It is common to hear allegations that the proxy process is dominated by issuers and biased in their favor. Shareholders routinely complain that corporations "control the proxy machinery." In practice, however, this is far from accurate. Proxy operations are better described as a closed world, governed primarily by non-public contractual agreements among private service providers whose activities are only indirectly subject to regulation. Issuers, even though they pay for these operations, are often just as frustrated as shareholders by their complexity, high cost and inefficiency.

In seeking ways to reform the proxy system and increase its transparency, it is critical to recognize that accountability for the system's inner workings should rest not just with issuers, but also with shareholders. This assertion may come as a surprise to U.S. observers, but it is already accepted by those familiar with the U.K. proxy system. A look at Paul Myners' January 2004 report of the U.K. Shareholder Voting Working Group, entitled "Review of the impediments to voting UK shares," is revealing. In describing the UK voting system Mr. Myners compares it to ". . . old pipework which could have been more effectively maintained over the years, and is now leaking at various points. . . ." This is an apt metaphor for the U.S. system as well.

Of critical importance to the issue of transparency is the following statement by Mr. Myners:

> "It is the beneficial owners who are responsible for ensuring that there is a clear chain of responsibility for voting their shares and that this is set out in the various agreements between the participants."

He says further,

> "I consider it important for the beneficial owners, as the end beneficiaries of shares, to drive those standards and ensure that any deficiencies are addressed."

We agree with Mr. Myners' balanced approach to assigning responsibility for the proxy system among all participants and his observation that reforms must incorporate the activities of shareholders and their agents. Effective proxy reform cannot be achieved simply by adding another layer of regulation or by piling more costs and responsibilities onto issuers.

We believe that many of the observations and recommendations set forth in the Myners' report are appropriate for the U.S. proxy system, particularly those suggestions that would increase the accountability and the transparency of proxy operations that serve the interests of beneficial owners. Among the Myners' recommendations we would endorse for the U.S. proxy system:

- beneficial owners should determine a voting policy and *engage fully in its implementation* (italics added)
- beneficial owners of shares should require their agents (custodians, investment managers, etc.) to have an electronic voting capability as part of their standard service conditions;
- beneficial owners should consider requiring their shares to be registered in a nominee company with designation in their own name or some other unique designation, rather than in an undesignated omnibus nominee account;
- Beneficial owners should be fully aware of the implications for voting if their shares are lent and, when a resolution is contentious, should recall the related stock'

Without greater transparency the U.S. proxy system will never achieve the goals that matter most to both shareholders and companies: a clear audit trail, end-to-end vote confirmation and certainty of voting results. Other goals also require transparency: elimination of the risk of double voting loaned shares, accurate reconciliation of share ownership positions on record date, greater facility in identifying and communicating with beneficial owners. These matters are discussed in our December 12 letter.

The proxy system's lack of transparency has not been challenged in the past because of a questionable assumption that the impact of these systemic deficiencies is neutral and therefore unlikely to affect vote outcomes in contested situations. In addition, the prevailing attitude seems to be that votes do not matter enough in "routine" meetings to justify the expense and effort to make the system more reliable. Only in election contests have voting results been deemed of sufficient importance to justify special procedures to ensure accountability and fairness.

We believe this relaxed attitude toward proxy voting will no longer be tolerated if Rule 14a-11 is adopted. In the context of trigger proposals and contested director elections both issuers and shareholders will step up their demands on the proxy system. Issuers will insist on greater ability to identify beneficial owners, track their voting instructions and confirm receipt of their votes. Shareholders will push for an audit trail and end-to-end vote confirmation. The right of both parties to demand greater transparency and accuracy from the proxy system cannot be disputed.

Higher performance standards can certainly be achieved. It is necessary to look only as far as brokers' and banks' Reorganization Departments, whose operations often sit next door to their proxy departments, to find very different attitudes, procedures and standards of performance. Reorg. Departments routinely achieve accuracy and transparency in the processing of tender offers, exchange offers and other corporate actions involving securities and cash. The same standards are achieved in money transfers, securities settlement and clearance and many other operations that underlie the securities and financial markets. No inaccuracy is tolerated when customers' money and securities are at stake. The clear message from this disparity between corporate actions and proxy operations is that hard assets and liability matter more than votes.

Recommendations and Conclusion

We believe that a comprehensive review and redesign of the proxy system is necessary and timely no matter what decisions the Commission makes with respect to Rule 14a-11. We also recognize that a comprehensive review would require a careful analysis of state law, SRO rules, back office procedures and global harmonization activities. Given the public pressure for prompt action on shareholder access, there may be insufficient time to complete such a comprehensive review before the Commission takes action with respect to Rule 14a-11. Accordingly, as suggested in our December 12 letter, we also recommend changes that we believe the Commission could implement immediately in order to simplify the proxy system and increase its transparency and reliability while long-term reforms are being considered.

Recommendations: (1) The Commission should undertake a comprehensive review of proxy procedures for the purpose of simplifying the system and increasing its transparency. (2) The Commission should promptly rescind the NOBO/OBO rules and establish a new direct access rule that will empower beneficial owners in street name to sign and vote proxies and entitle issuers to communicate directly with beneficial owners.

As suggested in our December 12 letter, rescission of the NOBO/OBO rules and creation of a new system of direct access between issuers and beneficial owners would not be difficult to achieve. The simplest approach would be to establish procedures for voting rights to be transferred from legal owners to beneficial owners through a chain of sequential omnibus proxies on record date. DTC would continue its current practice of transferring voting rights to participant banks and brokers through an omnibus proxy and participant listing. These brokers and banks would then execute their own record date omnibus proxies transferring the voting rights to the customers in whose accounts the shares are held. If the customer were another custodian or fiduciary, it would in turn transmit voting power to the next customer layer, and so on down the line. This process would continue as long as necessary to reach the beneficial owner who claims voting rights.

Customers with shares held in broker or bank name would no longer be required to choose a NOBO/OBO designation with respect to disclosure of their identity to issuers. By default they would be deemed non-objecting beneficial owners. Customers could still maintain anonymity by making custodial arrangements on their own behalf, but with two provisos: (1) they would have to agree to the establishment of a designated nominee for voting purposes (as suggested in the Myners' Report), thereby eliminating the problem of shares being lost in pooled accounts; and (2) they would bear the cost of these private arrangements and would not be entitled to reimbursement from issuers for handling charges, postage, proxy voting and other services provided by their nominee.

The confidentiality of brokers' customer relationships could be protected by withholding disclosure of the broker affiliation on record date omnibus proxies and customer lists. In fact, the broker would play no role in the proxy process if direct access were in place. Issuers would distribute proxy materials directly to the beneficial owners, who would be empowered to sign proxies and send them in directly to the issuer or its tabulator without going through the broker.

Brokers and banks would continue to be free to continue outsourcing the administration of their customer records. The likelihood of increased competition to provide intermediary services could help drive down costs.

A proxy claim system could be modeled on Reorganization Department procedures to reconcile record date positions, call in loaned stock and make other adjustments necessary to ensure that shares were not lost or double voted.

NYSE Rule 452 would no longer be needed under a direct access scheme. The risk of quorum problems resulting from the loss of discretionary broker voting would be reduced by the ability of issuers to identity and contact street name customers and solicit their votes directly. In effect, beneficial owners in street name would be treated in the same manner as registered shareholders for purposes of proxy solicitation and voting.

The benefits of this system are readily apparent. First, it would lift the wraps off back office mechanics, permitting a clear audit trail. Second, issuers could provide beneficial owners with vote confirmation. Third, direct access would facilitate greater use of electronic distribution and Internet voting, reduce reliance on printed documents and the postal system, reduce costs and speed up the entire solicitation process. Fourth, voting transparency would reduce pressure on proxy advisory firms and clarify the scope of their role as advisors to beneficial owners. Fifth, issuers would have access to more up-to-date and accurate information about their owners, enabling them to improve their communications and investor relations programs. Finally, voting results would be more accurate and less vulnerable to legal challenge.

We believe that proposed Rule 14a-11 creates an opportunity for the Commission to take a fresh look at the proxy voting process and to implement much-needed reforms. A reliable and efficient proxy system is essential to safeguard shareholder rights and achieve good corporate governance.

Respectfully submitted,

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