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SEIU
Stronger Together

December 15, 2003

Mr. Jonathan G. Katz, Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549

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OFFICE OF THE SECRETARY

Re: File No. S7-19-03

Dear Mr. Katz:

On behalf of the more than 40,000 participants and beneficiaries of the SEIU National Industry Pension Fund, I write to commend the Securities and Exchange Commission for its proposal S7-19-03 regarding security holder director nominations and to offer supporting comments.

These comments are born of very real and frustrating experiences in the performance of our fiduciary duty as active owners of our participants' equity investments. I will summarize just one of these experiences whose outcome would have been significantly different had the proposed rules on director nominations been in effect at that time.

In the late 1990s we filed a resolution with a major Fortune 500 company to declassify its board. We, and other shareholders, were concerned about the company's long-term outlook. We were concerned about the erosion of its franchise, its loss of market share and the inability of its board and senior management to come to grips with these issues. While the stock market was still booming, the company's stock had flattened out and was already declining. In the mid 1990s it stood at more than $80 per share and by the end of the decade it had dropped to around $60.

In our view one of the company's problems was an entrenched board and management hunkered down behind a wall of protections against accountability, including a classified board where only a third of the directors were elected each year.

We filed our first shareholder resolution in 1997, asking the board to declassify itself, to require that all directors stand for election each year.

We filed this resolution for four consecutive years. Every time we got a majority of the votes cast by shareholders. We won, over and over again. But here is the kicker: in the world of corporate proxy rules we didn't win. The board is still classified to this day. The board and management are still entrenched. The company continues to perform poorly. It is still losing market share. It is still struggling to turn itself around. After management's latest announcement this year of yet another fix, investors drove its stock down to the low twenties.

We lost because the corporate proxy rules have been stacked against shareholders. There is no recourse if a company ignores a majority vote on a shareholder resolution. Unless shareholders are willing to spend hundreds of thousands of dollars, if not millions, filing their own proxy statement, and running a proxy solicitation, there is absolutely no way for even major institutional investors to take the next step and elect one or more truly independent directors to a board.

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This is a classic example of where the SEC's proposed rule for access to the proxy could have resulted in a much better outlook for this company and its shareholders.

The Commission's proposal could, for the first time, give institutional investors the ability to challenge the power of CEOs to handpick their own directors.

Recent scandals at companies like Enron, Worldcom and HealthSouth demonstrate further the necessity for new rules to address the problem of self-serving CEOs and passive board at companies facing not a slow meltdown, but rapidly developing corporate crises.

I want to commend the SEC for taking this initiative. However, I would like to suggest some changes to make the rules practical and effective for large, long-term, institutional investors.

1. We urge that you eliminate all triggers. They can unnecessarily prolong a situation which is detrimental to long-term shareholder interests.
2. Should you persist with triggers, the requirements you have proposed are not realistic. The triggering shareholder proposal should follow existing 14a-8 rules and not 1% of ownership. The withhold vote threshold of 35% is excessive and should be lowered to 20%, a level which has stood the test of significant "no" votes in recent years. Finally, a company's failure to act on a majority vote should be added as a trigger, as evidenced by our own experience mentioned above.
3. Once triggered, access to the proxy should be granted to a shareholder or group of shareholders with 3% of a company's voting stock held for at least two years. The 5% threshold you have proposed is too onerous and, for many significant investors, will defeat the very intent of these new rules.
4. At all companies shareholders should be allowed to nominate more than one, but less than a majority of directors. One lone dissenting director will be ineffective at modifying the behavior of a board which has already demonstrated its lack of accountability to the interests of long-term shareholders.
5. The rules on independence for shareholder nominees should not be any different than those that prevail for company nominees. Full disclosure on each nominee should be all that is required.

I thank you for this opportunity to offer our strong support for this historic proposal, and encourage the Commission to adopt final rules that are responsive to our concerns.

Sincerely,

Steve Abrecht

Steve Abrecht
Executive Director of Benefit Funds

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