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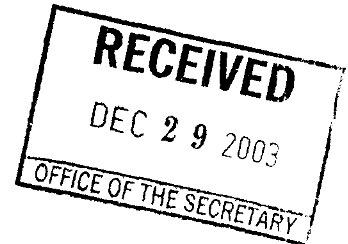

Jonathan G Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

19 December, 2003

Dear Mr Katz

PROPOSED RULE:SECURITY HOLDER DIRECTOR NOMINATIONS

As a leading European institutional investor, with approximately $200billion under management, we are writing to welcome the Commission's initiative in proposing Exchange Act Rule 14a-8 (the "proposal") to open up companies' proxy materials to shareholders. We believe this initiative has the potential to redress a significant distortion in the US capital market framework.

As managers and, effectively, providers of capital to the financial markets investors have a fiduciary responsibility to act in the best interests of the funds that we manage. As long-term investors an important aspect of that duty is the protection and enhancement of our investments. In this context, proper proxy access (e.g. to appoint or remove a director) is one of the basic corporate governance mechanisms that underpin the responsible exercise of our ownership rights and duties.

Proper access to the proxy is normally a basic ownership right, which enables shareholders to act responsibly and in a timely manner where management is consistently under-performing or engaging in practices that are value destructive or inappropriate (e.g. aggressive accounting or personal excess). Such rights exist in the UK, Australia, France, Germany, India, Ireland, New Zealand, South Africa, Sweden and other jurisdictions.

Measures that frustrate such rights or continue to enable poor management to shelter from accountability should not be used to undermine effective change. One such measure is the proposed use of "trigger" mechanisms that create unnecessary and unwarranted hurdles to the use of proxy access. As crafted, these risk undermining the proposal's effectiveness. The public interest objective of the 'trigger' restrictions is not really clear and the justification for regulatory intervention has not been made.

The proposal fails to recognise the effectiveness and experience in other markets, which give shareholders the authority to appoint and remove directors with comparative ease. Basic ownership rights in the United Kingdom give shareholders a right to:

- a binding vote for or against the election of a director at the first Annual General Meeting ("AGM") following his/her appointment (simple majority required);

- a binding vote for or against the re-election of a director when his/her term of office is up for renewal (simple majority required);
- to include a binding resolution at an AGM for the appointment of a director, pursuant to section 376 of the UK's Companies Act 1985 (simple majority required). The only trigger is that the sponsors requisitioning the shareholder resolution must either:
  - (i) include 100 shareholders with an average amount paid up of at least £100 (UK Sterling) per shareholder.
  - (ii) or represent 5% or more of the total voting rights (a low level given the concentration of ownership in the UK).
- The right to requisition an Extraordinary General Meeting ("EGM") where they can put forward binding resolutions to appoint and/or remove directors (again a simple majority required). The only trigger is that the shareholders calling such a meeting must represent 10% of the voting rights (again a low level given the UK's concentration of ownership).

The equivalent voting right thresholds for the US should recognise the level of fragmentation that exists in the US market. They should probably be set at a level below 3% and 6% respectively.

We understand that arguments have been presented by corporate America in support of restrictions, based on the argument that the proposals risk destabilising boards. We reject these arguments as special pleading by vested interests and as protectionism. The plentiful evidence available in markets where executives are properly accountable to shareholders does not support such an assertion. Given the need for the support of a majority of shareholders, frivolous requisitions are unlikely to prosper. Indeed we would argue that the availability of this right is more likely to lead to stability, a reduction in time-consuming, disruptive and expensive proxy battles and a shift of emphasis towards more serious, collaborative and constructive dialogue based on accountability.

Turning to another issue, the timescales envisaged in the proposal also risk distorting the situation. Delaying access beyond the next annual meeting helps maintain and possibly exacerbate situations that are undermining the business and shareholder value. In addition, the proposal to limit the time period for nominations after a triggering event to two years risks forcing the hand of shareholders to nominate candidates quickly rather than seeking to work for constructive change and resolution first. These are unnecessary measures and risk distorting behaviour.

We would therefore encourage the SEC to avoid distorting the normal exercise of shareholders ownership rights and adopt an approach more in line with the prevailing practice found in other mature capital markets. In a worse case scenario, were the Commission to adopt the proposal with the trigger mechanism intact, we would urge you to:

- adjust the first triggering event, where a company receives a certain level of withhold votes on at least one of the company's nominees for board of directors, so that the level is set at 20% not 35%;
- adjust the second triggering event, so that a shareholder resolution to make a company subject to the requirements has effect solely on the basis that it receives

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support from the majority of votes cast (i.e. that the level of shareholders sponsoring the original resolution is irrelevant); and

- include the additional trigger, that a company which fails to implement a shareholder resolution (pursuant to the U.S. Securities Exchange Act of 1934) that received support from the majority of votes cast, becomes subject to the requirements.

In conclusion, we believe that the proposal needs to be reconsidered, to remove the artificial hurdles that have been incorporated, which will hinder shareholders' ability to respond to potentially significant problems in the companies they own.

Thank you for the opportunity to comment. We look forward to seeing how the proposal develops from here.

Yours sincerely

Keith Jones
Chief Executive
Morley Fund Management