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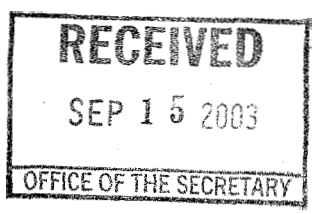
September 9, 2003



Jonathan G. Katz, Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549-0609

Re: File No. S7-14-03

Dear Mr. Katz,

The American Federation of State, County and Municipal Employees ("AFSCME") is the nation's largest public service employees union with more than 1.4 million members who participate as members and plan beneficiaries in over 150 public pension systems whose assets total more than one trillion dollars. The AFSCME Employees Pension Plan is a long-term shareholder that manages $500 million in assets for its participants. We appreciate the opportunity to comment on Exchange Act Release No. 48301, "Disclosure Regarding Nominating Committee Functions and Communications Between Security Holders and Boards of Directors" (the "Release").

We write in strong support of the new disclosure requirements proposed in the Release, which will facilitate shareholder understanding of and participation in the corporate governance of companies they own. Such developments come at a pivotal time, as shareholders disillusioned by the corporate scandals of the past few years seek additional tools to help them fulfill their monitoring responsibilities. The disclosure proposed by the Commission in the Release will shed light on the critical nominating function of the board, which has traditionally been shrouded in secrecy, and will enable shareholders to assess boards' responsiveness to shareholder concerns.

It is important to note at the outset, however, that disclosure alone will not ensure that management and boards of directors are accountable to shareholders. As we have expressed to the Commission in our recent submission on shareholder access to the proxy, substantial, long-term shareholders must also have the ability to nominate candidates for inclusion in the company's proxy materials. We therefore look forward to the Commission's proposals on that subject later this month

Nominating Committees and the Nominating Process

The process by which a board selects director nominees is at the heart of its corporate governance, since these decisions will affect the company far into the future. In requiring that listed companies have a nominating/governance committee, the New York Stock Exchange opined that such a committee is "central" to the board's operations.[1] Currently, companies must only disclose whether they have a nominating committee and whether they will consider suggestions from shareholders regarding potential candidates. This disclosure is of only limited utility to shareholders.

Shareholders are not provided with any of the information they need to evaluate the effectiveness of a company's director nomination process: the qualifications candidates are required to have, the range of persons considered, standards for the composition of the board as a whole and/or key committees beyond those imposed by law or regulation, the extent of participation by the CEO and other senior officers in identifying and screening candidates and the use of third-party service providers. Importantly, there is not even a requirement that companies which purport to accept shareholder suggestions disclose whether the board or committee received any such suggestions and, if it did, how it responded. Shareholders' desire for information about the nominating process can be seen in their support for proposals regarding board diversity, which generally require a report on the process by which a company identifies and screens candidates.

The additional disclosure proposed in the Release would address these concerns. We urge the Commission not to sacrifice any of the specificity of its current proposals; vague, boiler-plate disclosure consisting of laundry lists of possible factors will not be useful to shareholders. None of the proposed requirements is overly detailed, and more general disclosure would not accomplish the goals set forth in the Release. For example, requiring companies to disclose the source of new director candidates will allow shareholders to determine the extent to which the CEO and other senior executives dominate the nomination process. More general disclosure, such as a list of permissible sources, would obfuscate that issue.

Shareholders should also be kept apprised in a timely way of any changes related to these disclosures. Most critically, companies should be required to disclose in a report on Form 8-K any changes to the requirements and procedures for shareholder submission of candidate recommendations. Shareholders should not be disempowered by an undisclosed change in procedures.

Disclosure of relationships between candidates and their sponsors is also essential. Now, proxy statement disclosure focuses on relationships between director nominees and companies. But there is evidence that even directors without such ties sometimes have relationships with CEOs and other senior officers that may compromise those directors' ability to be objective. Significant independent research is necessary to uncover data such as joint property ownership by CEOs and directors. Requiring disclosure of such information in connection with the nomination process will ensure that shareholders can

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[1] New York Stock Exchange, Section 4 of amendments to Rule 303A.

adequately assess the board's independence as well as the effectiveness of the nominating process.

With respect to third-party service providers, shareholders should be provided with the information they need to determine whether a vendor can be counted on to provide objective advice. In that regard, the Commission should require not only disclosure of the use of such a service, but also whether the vendor has performed any other services for the company or its senior officers in the recent past. As with compensation consultants, there is concern that director search firms may be used to legitimize a search process that is dominated by company management.

We strongly support the use of a 3% threshold in the proposed requirement that companies disclose the treatment of shareholder recommendations of nominees. As we argued in our recent submission on shareholder access to the proxy, a 3% threshold strikes an appropriate balance, empowering shareholders with a meaningful stake in the company while ensuring that the mechanism is employed responsibly. We urge the Commission not to link the disclosure requirement to an indication of intent to continue to hold the securities for some period of time. Such a requirement could be problematic for funds that hold company shares in an index, since retention of the shares depends on inclusion in the index.

Shareholder Communications with Board Members

In the last two proxy seasons, the AFSCME Employees Pension Plan submitted a shareholder proposal to Kroger seeking establishment of a shareholder committee whose mandate would be to meet with independent directors to discuss any shareholder proposal that had received majority support but not been implemented by Kroger's board. The animating force behind this proposal, which was supported by holders of 48% of Kroger's shares this year, was the ongoing refusal of Kroger's board to implement a proposal to declassify the board that had been supported by a sizable majority of shares over a several-year period. The proposal was crafted to create a means of communication with independent directors that would not be mediated by company management, to ensure that independent directors are given the opportunity to be responsive to shareholder concerns,

Shareholders are increasingly demanding such access, reasoning that they elect independent directors to safeguard shareholder interests, For example, this past spring, the chairman of the compensation committee of a prominent U.S. company met with representatives of several union and public pension funds. In other cases, independent directors are serving informally as liaisons between the board and shareholders.

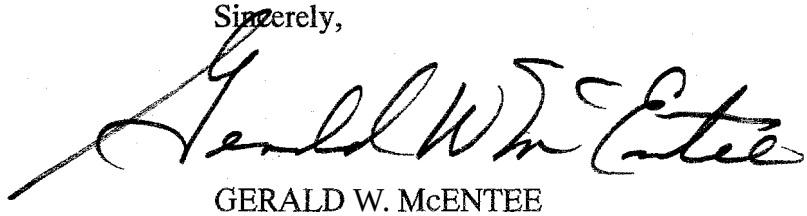
The existence (or lack thereof) of a process for shareholders to communicate with independent directors sheds light on the overall company responsiveness and ability to shareholder interests. If the process involves company management, shareholders cannot know the extent to which the process is authentic and free from interference and manipulation. For that reason, the Commission should require that if a company does not send all communications directly to independent directors, it must to

disclose the extent to which such communications are screened and the guidelines for determining which communications are forwarded to directors and which are not.

Finally, the Release seeks comment on a proposal that companies be required to disclose material actions taken in response to shareholder communications. We do not believe that any category of communication should be excluded from the rule's coverage. Shareholders communicate with companies in a variety of formal and informal ways, and a material action may result from any of these encounters. In light of the frustration expressed by many shareholders about company non-responsiveness to non-binding shareholder proposals that receive majority support, it would be particularly inappropriate to exclude proposals under Rule 14a-8 from the definition of communication.[2]

We appreciate the opportunity to present our views to the Commission regarding these issues. If we can be of further assistance, please do not hesitate to contact Richard Ferlauto at (202) 429-1275.

Sincerely,



GERALD W. McENTEE
International President

GWMcE:rfc

[2] With respect to excluding communications from employee and management security holders from the rule's coverage, we believe it would be far easier to accomplish by excluding those categories of persons from the definition of security holder.