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September 29, 2010

The Honorable Christopher J. Dodd
Chairman
The Honorable Richard C. Shelby
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Barney Frank
Chairman
The Honorable Spencer Bachus
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Securities and Exchange Commission: Facilitating Shareholder Director Nominations*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Securities and Exchange Commission (SEC), entitled “Facilitating Shareholder Director Nominations” (RIN: 3235-AK27). We received the rule on August 26, 2010. It was published in the *Federal Register* as a final rule on September 16, 2010. 75 Fed. Reg. 56,668.

The final rule adopts changes to the federal proxy rules to facilitate the effective exercise of shareholders’ traditional state law rights to nominate and elect directors to company boards of directors. The new rules will require, under certain circumstances, a company’s proxy materials to provide shareholders with information about, and the ability to vote for, a shareholder’s, or group of shareholders’, nominees for director. SEC believes that these rules will benefit shareholders by improving corporate suffrage, the disclosure provided in connection with corporate proxy solicitations, and communication between shareholders in the proxy process. The new rules apply only where, among other things, relevant state or foreign law does not prohibit shareholders from nominating directors. The new rules will require that specified disclosures be made concerning nominating shareholders or groups and their nominees. In addition, the new rules provide that companies must include in their proxy materials, under certain circumstances, shareholder proposals that seek to establish a procedure in the company’s governing

documents for the inclusion of one or more shareholder director nominees in the company's proxy materials. SEC is also adopting related changes to certain other rules and regulations, including the existing solicitation exemptions from SEC's proxy rules and the beneficial ownership reporting requirements.

SEC is adding new Rule 82a of Part 200 Subpart D—Information and Requests, and new Rules 14a-11, and 14a-18, and new Regulation 14N and Schedule 14N and is amending Rule 13 of Regulation S-T, Rules 13a-11, 13d-1, 14a-2, 14a-4, 14a-5, 14a-6, 14a-8, 14a-9, 14a-12, and 15d-11, Schedule 13G, Schedule 14A, and Form 8-K, under the Securities Exchange Act of 1934 (Securities Act). Although SEC is not amending Schedule 14C under the Exchange Act, the amendments will affect the disclosure provided in Schedule 14C, as Schedule 14C requires disclosure of some items contained in Schedule 14A.

The rule has an effective date of November 15, 2010. The compliance date is November 15, 2010, except that companies that qualify as “smaller reporting companies” (as defined in 17 C.F.R. § 240.12b-2) as of the effective date of the rule amendments will not be subject to Rule 14a-11 until 3 years after the effective date.

Enclosed is our assessment of the SEC's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that SEC complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Elizabeth M. Murphy
Secretary, Securities and
Exchange Commission

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
SECURITIES AND EXCHANGE COMMISSION
ENTITLED
"FACILITATING SHAREHOLDER DIRECTOR NOMINATIONS"
(RIN: 3235-AK27)

(i) Cost-benefit analysis

SEC believes that Rule 14a-11 and the amendment to Rule 14a-8(i)(8), where applicable, will offer four benefits. First, SEC states that the final rule will facilitate shareholders' abilities to exercise their traditional state law rights to nominate and elect directors. Second, SEC notes that the final rule will establish a minimum uniform procedure pursuant to which shareholders will be able to include their director nominees in a company's proxy materials and enhance shareholders' abilities to propose alternative procedures that further shareholders' rights to nominate and elect directors. Third, SEC states that the final rule will potentially improve overall board and company performance. Finally, SEC believes the final rule will result in more informed voting decisions in director elections due to improved disclosure of shareholder director nominations and enhanced communications between shareholders regarding director nominations.

SEC anticipate that the new rules, where applicable, may result in costs related to potential adverse effects on company and board performance; additional complexity in the proxy process; and preparing the required disclosures, printing and mailing, and costs of additional solicitations. SEC also states that the new rules may result in additional costs. SEC explains that with respect to investment companies, one commenter stated that if a shareholder nomination causes an election to be "contested" under rules of the New York Stock Exchange, brokers would not be able to vote client shares on a discretionary basis, making it difficult and more expensive for investment companies to achieve a quorum for a meeting. SEC recognizes that it may be more costly for investment companies to achieve a quorum in such a situation, but believes, however, that the costs imposed on investment companies will be limited. SEC notes that its decision to adopt, as proposed, the revisions to Rule 14a-6(a)(4) and Note 3 to the rule means that the inclusion of a shareholder director nominee in the company's proxy materials will not require the company to file preliminary proxy materials, provided that the company was otherwise qualified to file directly in definitive form. SEC states that because the proxy materials will not be filed in preliminary form, SEC staff may not have the opportunity to review these proxy materials before companies make definitive copies available to shareholders. SEC believes staff review of preliminary materials can benefit shareholders by helping to assure that companies comply with the federal proxy rules and provide appropriate disclosure to shareholders. SEC believes, however,

GAO-10-1065R

that any cost related to the staff's inability to review preliminary proxy materials is mitigated by the staff's ability to review the disclosure contained in the Schedule 14N as well as in any additional soliciting materials filed by either the company or the nominating shareholder or group. Further, SEC notes that it recently stated that the staff retains the right to comment on proxy materials filed in definitive form if the staff deems that to be appropriate under the circumstances.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

SEC states that the final rules will affect some companies that are small entities. The Regulatory Flexibility Act defines "small entity" to mean "small business," "small organization," or "small governmental jurisdiction." SEC's rules define "small business" and "small organization" for purposes of the Regulatory Flexibility Act for each of the types of entities regulated by the SEC. Securities Act Rule 10(a) defines a company, other than an investment company, to be a "small business" or "small organization" if it had total assets of \$5 million or less on the last day of its most recent fiscal year. SEC estimates that there are approximately 1,209 issuers that may be considered small entities. For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of \$50 million or less as of the end of its most recent fiscal year. SEC estimates that approximately 168 registered investment companies and 33 business development companies meet this definition. SEC believes the new rules may affect each of the approximately 201 issuers that may be considered small entities, to the extent companies and shareholders take advantage of the rules.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, SEC is not subject to title II of the Unfunded Mandates Reform Act of 1995.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The final regulations were issued using the notice and comment procedures found at 5 U.S.C. § 553. On June 10, 2009, SEC proposed a number of changes to the federal proxy rules designed to facilitate shareholders' traditional state law rights to nominate and elect directors. See 74 Fed. Reg. 29,024. SEC provides responses to the comments it received in the final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

SEC states that certain provisions of the final rules contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995 (PRA). SEC states that it published a notice requesting comment on the collection of information requirements in the Proposing Release for the rules, and submitted these requirements to the Office of Management and Budget (OMB) for review in accordance with the PRA.

Statutory authorization for the rule

SEC states that the amendments are made pursuant to sections 3(b), 13, 14, 15, 23(a), and 36 of the Securities Exchange Act of 1934, as amended; sections 10, 20(a), and 38 of the Investment Company Act of 1940, as amended; and sections 971(a) and (b) of the Dodd-Frank Act.

Executive Order No. 12,866 (Regulatory Planning and Review)

As an independent regulatory agency, SEC is not subject to the review requirements of the order.

Executive Order No. 13,132 (Federalism)

As an independent regulatory agency, SEC is not subject to the review requirements of the order.