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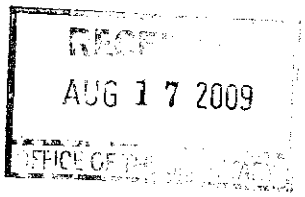
August 13, 2009



Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Comments on Release No. 34-60089 (Facilitating Shareholder Director Nominations);
File No. S7-10-09

Dear Ms. Murphy:

I am the Executive Vice President Law, Chief Legal Officer and Secretary of Peabody Energy Corporation, a Delaware corporation with over $6.6 billion in annual revenues and approximately 7,000 employees. Peabody Energy appreciates the opportunity to submit comments to the Securities and Exchange Commission (SEC) on its proposed rules that would require reporting companies to include director nominees proposed by shareholders in the company's proxy materials, subject to certain eligibility, qualification and procedural requirements.

Peabody Energy is opposed to federal shareholder access rights for the following reasons:

- Substantive regulation of shareholder rights and director elections fall squarely within the purview of state corporation law and pre-empt action by the SEC;
- Numerous reforms of recent years have provided shareholders with sufficient access to relevant information and to corporate decision-makers. Because of these reforms there is no compelling need for a federal access right; and
- The integrity of the voting system is a more urgent issue requiring the SEC's attention and should be addressed before putting further stress on the system with shareholder access.

Shareholder Access is a Matter of State Law

Director elections and shareholder rights have been under the control of state law since the inception of the corporate structure for well over 100 years. Because of this longstanding responsibility and the lack of authority by the SEC to act in this area of corporate governance, we believe the SEC should leave the rules and methods of electing directors to the states.

No compelling reason exists to overturn the long-standing state law role in controlling the substantive rules regarding director election and that role should be preserved and protected. Experience shows that the state law route is more likely to preserve flexibility for companies and shareholders to define the right approach given the circumstances at hand. The SEC can and should play a pivotal role by exercising its jurisdiction over disclosure to ensure that shareholders are fully informed about their rights and that there are transparent procedures for the exercise of such rights. Moreover, such a role is in accord with the SEC's limited authority under Section 14(a) of the Securities Exchange Act of 1934.

The pursuit of a federal right to access will lead to a one size fits all rule. This results in unnecessary burdens for small and mid sized companies which cannot afford the distraction and expense of the process. It means that all companies will be viewed similarly in determining access design features. However, it is obvious that no one approach can respond to the diversity in business strategy, profit model, size, scope and ownership structure that characterizes corporate America.

If, in the alternative, states are allowed to exercise their rightful authority, companies will be able to work with shareholders to determine the features that are meaningful and workable for them. By preserving flexibility in design and implementation, the competitiveness of American businesses will be enhanced. Currently, this is the model being used for majority voting of directors, staggered boards and the right of shareholders to call special meetings, among others. These changes have occurred through a dialogue between directors and shareholders, all without government mandates. This flexibility has served U.S companies and shareholders well and preserving and fostering it should be the touchstone for corporate governance reform.

Recent Reforms Have Expanded Shareholder Rights

In recent years there have been significant corporate governance reforms, including enhanced director independence, audit committee financial expertise, independent lead directors, majority voting for directors, the elimination of staggered boards and enhanced disclosure of executive compensation.

In addition, companies have taken a variety of steps to enhance communication with shareholders including using web-based technology to communicate with shareholders,

holding meetings with major holders and conducting shareholder surveys. In light of these reforms we do not see a need for a broad, uniform shareholder access rule. In fact, shareholders have made very limited use of their right to recommend candidates for nomination, evidence that there is no compelling need for access.

Communication and Proxy Voting Improvements Should be Reviewed

As the marketplace has changed, issues have emerged that merit a review by the SEC of proxy voting participation, including the lack of retail investor familiarity with the proxy solicitation process and the separation of voting and economic rights. For example, improvements to the Notice and Access framework are needed to increase retail investor participation and the appropriate disclosure of ownership interests may be needed. Additionally, new technologies can be introduced into the proxy voting system to better foster communications between investors and boards. Alternative voting processes also present opportunities to better balance the diverse voices of the investing community. The SEC should take a holistic view of all market participants in examining and improving broader proxy voting participation.

Proposed Amendments to Rule 14a-8(1)(8)

If the SEC decides that federal action is needed at this time, we ask that you consider adopting revised amendments to Rule 14a-8(i)(8) instead of a federal proxy access right. Amending Rule 14a-8(i)(8) to allow proxy access shareholder proposals would further the state law interest addressed above and would enable companies and their shareholders to tailor an access system to the unique needs of the individual company. However, we feel that the current ownership and holding period thresholds of Rule 14a-8 are ineffective in the context of a proxy access proposal. Amendments to Rule 14a-8(i)(8) should include: a higher ownership threshold such as five percent for a single shareholder or ten percent for a coordinated group of shareholders; a longer minimum share holding period such as three years; and a requirement that nominating shareholders pledge to retain their shares through at least the first term of their director nominee(s).

Proposed Rule 14a-11

If the SEC decides to adopt a federal proxy access right, we ask that significant amendments be made to proposed Rule 14a-11. The proposal should be revised to require that shareholders wishing to nominate proxy access directors own a meaningful percentage of a company's shares and for a significant period of time. We suggest a minimum ownership level of 5% for individuals and 10% for multiple shareholders acting together. Nominating shareholders should be required to have owned their shares for at least two years.

A revised Rule 14a-11 should limit the number of proxy access nominees to one director each annual meeting season. Simultaneously adding multiple directors with little or no experience with their new company could greatly disrupt board function and place an unnecessary strain on company resources. Larger shareholders should be given priority over smaller shareholders when nominating directors rather than establishing a race to be first.

Shareholders should not be permitted to nominate proxy access directors for some period of time *(e.g.,* three years) if their prior proxy access director nominee fails to obtain a significant percentage of votes cast such as 25%.

The rules should prohibit proxy access nominees from being affiliated with the nominating shareholder or shareholder group. This requirement is essential to help ensure that director candidates are not chosen based on their allegiance to the narrow interests of a particular shareholder to the possible detriment of others. Further, proxy access nominees should satisfy the director independence and qualification requirements adopted by the company's board of directors and disclosed in the proxy statement.

Finally, there are sound reasons why the effective date of proposed Rule 14a-11 should be delayed until the 2011 proxy season, including: allowing time for companies to amend their bylaws, educate their shareholders and take other preparatory actions; and allowing time for the SEC to prepare for the enormous burden that will be placed on its resources.

* * *

Thank you for considering our comments on the proposed rules. If you would like to discuss these comments or any other issue, please do not hesitate to contact me at 314-342-3485 or Kenneth L. Wagner at 314-342-7994.

Very truly yours,

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