

August 17, 2009

VIA E-MAIL

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

*Re: File No. S7-10-09
Facilitating Shareholder Director Nominations*

Dear Ms. Murphy:

The Securities and Exchange Commission has published proposed rules that would require companies to include in their proxy materials shareholder nominees for election as members of corporate boards of directors and amend the Commission's shareholder proposal rules to permit certain shareholder proposals related to such nominations. I am referring to "Facilitating Shareholder Director Nominations; Proposed Rule; Release No. 34-60089, 74 Fed. Reg. 29,024 (2009)." This letter is my submission of comments to the Commission. The proposal outlines procedures for shareholders to be eligible to have their nominees included in the proxy materials who hold more than 1%, more than 3%, and more than 5% of a firm's equity depending on the market value of a filer or the assets of a registered investment company. This comment has to do with the impact of the proposal on employee shareholders and it will discuss the relevance, potential impact, and costs and benefits of the role employee shareholders can serve in this process.

Employee shareholders play an important role as blockholders in the corporations covered by the proposal. This is certainly the case. For example, in 2002 and 2006 the General Social Survey conducted by the National Opinion Research Center at the University of Chicago surveyed a random sample of working adults in the U.S. private sector. An analysis of these publicly available data indicates that 21.2% (in 2002) and 17.5% (in 2006) of working adults in the private sector respectively owned stock in the company where they worked while 13.1% (in 2002) and 10.8% (in 2006) of working adults in the private sector respectively also held stock options in the companies where they worked. Moreover, in 2006, 34.9% of working adults owned stock in companies that were stock corporations, while 25.7% of working adults held stock options in companies that were stock corporations. This analysis is contained in a forthcoming book by Douglas Kruse, Richard Freeman, and Joseph Blasi. *Shared Capitalism at Work*, which is currently in press by the University of Chicago Press and expected to appear in the spring of 2010. Moreover, these nationally representative data indicate that a quarter to almost half of all the employees in certain industries own stock in the companies where they are employed: 43.8% of all employees in communications/utilities, 31.9% of employees in

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finance/insurance , 31.3% of employees in computer services , 26.9% of employees in transportation, 28.8% of employees in non-durable manufacturing, , and 25.9% of employees in durable manufacturing. In 1991, an analysis of publicly-available data including SEC filings and Form 5500 U.S. Department of Labor ERISA filings on employee benefit plans demonstrated that employee benefit and related plans had significant (more than 5%) broad-based employee shareholding in 1000 publicly-traded corporations with an average blockholder stake of 12.19% and a median blockholder stake of 9.8%. and that employee shareholders were the top shareholder/blockholder by percentage of shares owned in 41% of the 1000 publicly-traded firms according to best estimates of publicly available information . (See Joseph Blasi and Douglas Kruse, *The New Owners*, New York: HarperCollins, 1991, pps 9-20, pps. 216) A more recent analysis has focused on the 100 largest high technology publicly-traded companies that produce technology for/run/sell on/write software for/provide services using the Internet using SEC filings and email surveys of the companies. According to this analysis, a broad group of non-top five executive employees has 19% of the total potential employee equity in these companies (stock plans plus all fully diluted exercise of stock options outstanding). This potential employee equity stake is greater than the stake of the founder, the director, the top five officers, and in most cases, founding venture capital firms or other blockholders identified in SEC filings. (See Joseph Blasi, Aaron Bernstein, and Douglas Kruse, *In The Company of Owners*, New York: Basic Books, 2003, pps. 87, 91). In both studies we find virtually no examples of non-executive employees holding board seats in public companies as a result of shareholder rights related to their employee shareholding. This is consistent with the general lack of blockholder representation in board nominations nationally.

Employee blockholders/shareholders who as a group hold company stock in employee benefit plans or Employee Stock Purchase Plans or other disclosed plans in SEC filings clearly can have stakes far in excess of 1%, 3%, and 5%, and in many cases certainly fall within the market value or asset value categories. The Commission proposal says that aggregate holdings can be used as a basis for shareholder nominations. This may be relevant to employee shareholding. However, there are some issues that need to be clarified in the Commission's proposal in order to make the proposal practically useful to employee shareholder groups and in order to protect the access to shareholder rights of this important section of the citizenry and shareholders.

First, employee shareholders need to be able to easily and transparently identify the level of employee shareholding in SEC filings on the SEC web site. I recommend that the Commission provide enhanced instructions to filing corporations to be sure that employee benefit plans and Employee Stock Purchase Plans holding more than 1%, 3%, and 5% of company shares at the record date of filings be identified in the proxy in the section on Security Ownership of Beneficial Owners and Management. Currently, it is my understanding that this section identifies shareholders with more than 5% stakes. However, it was our experience in conducting the 1991 study that some companies that were identified by public records (such as

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Form 5500 ERISA filings) as having more than 5% employee shareholding, were actually not disclosed as blockholders in the Security Ownership of Beneficial Owners and Management section of the filings for the years that we studied. If this is still true, it represents a lack of transparency in an important segment of shareholding. Some exploration on this issue on my part revealed that it is possible that companies believe that they are only required to disclose more than 5% beneficial holdings of individual employee benefit plans holding more than 5% but not the sum of several employee benefit plans (or an Employee Stock Purchase Plan) holding more than 5%. I believe that it would make sense to clarify this in order to increase the transparency for employee shareholders and for shareholders in general so that they know how a firm is owned by blockholders.

Second, I recommend that the Commission's proposal go into greater detail about the mechanism for employee shareholders to exercise their shareholder rights in order to put forward a nominee or a shareholder proposal under the Commission's proposal. For example, can the trustee of an ERISA employee benefit plan exercise employee shareholder rights under the Commission's proposal? Can a group of employees who properly demonstrate an aggregate holding that meets the proposal's filing standards independent of a trustee exercise employee shareholder rights under the Commission's proposal?

Third, the risk of employee shareholding and the enhanced risks in an unstable market have been aptly demonstrated in the recent economic recession and the tech market collapse earlier in this decade. Given the level of employee shareholding, it would be a benefit to these significant blockholders that represent a significant section of U.S. citizens and shareholders to have access to the Commission proposal. This is a clear added potential benefit of the proposal.

The Commission's proposal can have an important potential impact on employee blockholders if, as part of the proposal, the Commission, will encourage transparency in SEC public filings about the stakes of such blockholders and define some minimum guidelines for how the proposal's machinery will apply to this group of blockholders.

Thank you very much.

Sincerely,

Electronic signature

Joseph Blasi
Professor

P.S. This comment is written on University stationary for identification purposes only. This comment should not be construed to be the opinion of either my University, my colleagues, or others. END