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Business Roundtable Proposes Rulemaking to Enhance Communication
with Beneficial Owners

Earlier this month, the Business Roundtable submitted a significant rulemaking petition to the SEC to enhance the ability of public companies to communicate directly with beneficial owners of shares held in street name and to permit those beneficial owners to vote directly rather than through brokers or banks. The changes, if adopted, could have a major effect on voting and turnout among beneficial owners, especially retail investors. Georgeson Shareholder Communications sent a separate letter to the SEC in support of the rulemaking initiative. The proposal asks the SEC to conduct a review of the current shareholder communication system, and in particular makes the following recommendations:

- Eliminate the OBO/NOBO rules. The proposal calls for the elimination of current SEC rules that distinguish between two types of beneficial owners: objecting beneficial owners (OBOs), who insist on anonymity, and non-objecting beneficial owners (NOBOs), who permit their brokers or banks to reveal their identity to the company whose shares they own. The proposal argues that current SEC rules prohibiting companies from communicating directly with OBOs, who own more than 50% of all public company shares and an estimated 75% of shares held in street name, create a costly and circuitous “daisy chain” system that hampers the ability of companies to communicate effectively with their shareholders. The proposal notes that shareholders who want to preserve their anonymity can establish nominee accounts (e.g., partnerships) and should bear the cost of doing so rather than spreading the cost among all shareholders as a group.
- Permit companies to mail proxy materials directly. The proposal requests that companies be permitted to forward proxy materials directly to beneficial owners, noting the inefficiencies, delays and high costs of the current system. The proposal points out that while current rules permit companies to mail proxy materials to NOBOs, in practice they never do so because SEC rules require companies to forward proxy materials through brokers and banks regardless of whether they are also mailed directly.
- Permit beneficial owners to vote directly. The proposal calls for the SEC to permit beneficial owners to cast votes directly, noting the lower-cost communication technologies, such as Internet voting, that are now available to record holders, and the prospect of further technological advances that will give companies “real time” access to beneficial ownership information.

In proposing these recommendations, the Business Roundtable and Georgeson noted that the need for reform is exacerbated by the SEC’s proposed shareholder access rule (see our memo of November 14, 2003), because adoption of such a rule would likely force

companies to engage in more frequent solicitation efforts. Georgeson argued that a shareholder access rule would accelerate the proliferation of “hybrid solicitations” that differ from traditional proxy contests and that take a variety of forms, such as “withhold” solicitations against directors, “just vote no” solicitations against management proposals, and shareholder proposal campaigns. The Business Roundtable also pointed to recent NYSE changes that eliminated brokers’ discretionary authority to vote on equity compensation plan proposals, and to the possibility that the SEC might eliminate discretionary broker voting altogether, as providing additional impetus for companies to communicate with and solicit the support of shareholders.

The proposed recommendations, if adopted, could significantly enhance the ability of companies to engage directly with investors on a variety of issues from director elections to shareholder proposals. An enhanced ability to communicate with and solicit beneficial owners may represent an important step for companies trying to counteract the growing prevalence of voting based on guidelines rather than on case-by-case analysis.

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