

## **Report From the Front**

Les Greenberg writes on his experience at the Security Holder Director Nominations Roundtable, sponsored by the Securities and Exchange Commission, which occurred on March 10, 2004 in Washington, D.C.

Our goal was to present the views of the Committee of Concerned Shareholders that, in order for institutional shareholders to really participate in the director nomination process, the SEC needs to lower the threshold in their proposal so that director nominations by shareholders who own \$2,000 in stock for one year will appear on the corporate ballot. Further, we wanted to meet those persons with whom we had either previously had email communication and/or who had published writings sympathetic to our position.

The Wall Street Journal and the Washington Post carried full page advertisements, which began, "An open letter from 40 former CEOs to the SEC -- - Beware the law of unintended consequences ..." The ad concluded, "These unintended consequences could have serious adverse impact of the American economy. The proxy rule changes are bad public policy." " The SEC should reject."

The Roundtable was scheduled from 9:00 AM. to 5:15 PM. Our Panel, with issues related to the consequences to Shareholders, was allotted 30 minutes --- the shortest time of all panels. Evelyn Y. Davis used much of that time to lambaste the SEC. Of the 38 Panelists, only Ms. Davis and the Committee represented the views of Individual Investors.

The SEC and Staff did an impressive job of organizing the Roundtable. The Commissioners and the Staff were very hospitable.

For the most part, there was a very friendly atmosphere. My wife and I sat in the first row that was reserved for guests. We first met the CFO of the Nathan Cummings Foundation and she introduced us to its Chairman and CEO. I introduced myself to Evelyn Y. Davis and later several others. We had the definite impression that most of the panelists knew one another. It was as if the SEC had rounded-up "the usual suspects."

Chairman Donaldson, in his opening remarks, specifically requested that alternatives to the SEC's proposed rule be presented, but few were offered. Those defending the status quo gave their "special interests" and "corporate chaos" speeches. Some claimed that proxy reform is a matter for state legislation. Some advocated compromises that would result in no change. Some accepted the SEC's proposed rule as a beginning. A few others tried to demonstrate that the proposed rule is unworkable, e.g. due to legal fears.

The Roundtable room was set up for Panelist and the Commissioners in a U-

shape. Looking into the U-shape, the Panelists sat at the center of the U-shape with Commissions Glassman, Donaldson and Goldschmidt on the right leg and Commissioners Atkins and Campos of the left leg. Moderators Beller and Dunn sat in the center-right and cameramen were located next to them on the center-left. Two rows of chairs were stationed behind the Commissioners on the right for panelists. Behind the moderators were two rows of reserved seats for guests of the panelists then about 10 rows for the public with televisions monitors scattered throughout the area.

The SEC sponsored a buffet lunch for the participants. Many members of the morning's panels had already left and several of the afternoon's panelists had not arrived. We joined representatives of the Nathan Cummings Foundation at a table for 6 persons. Commissioners Campos and Atkins joined us. We talked mostly with Commissioner Atkins. We expressed our thoughts on the non-workability of the proposed rule. We informed Commissioner Atkins of how the Guy Adams model at Lone Star Steakhouse could be effectively employed if shareholder proposals could be used to nominate Director candidates. He was impressed with my wife's comments that any rule with stock thresholds should be applied equally to outside nominators and members of a corporation's nominating committee --- the quasi-legal principle of what's good for the goose is good for the gander. Commissioner Atkins encouraged me to speak to the flaws in the proposed rule and to suggest alternatives. He was not familiar with Assembly Bill 2752 that has been proposed in the California legislature.

My sense is that institutional shareholders will not nominate director candidates if the rule is enacted. In private conversations, I was informed that most funds weren't geared up for it but that the Guy Adams model at Lone Star Steakhouse "might work."

The Commissioners asked many questions. Commissioner Goldschmidt seemed to be the most knowledgeable and most familiar with the proposed rule and its shortcomings. We were disappointed that the Commissioners did not inquire of the panelists as to the ability and willingness of institutional shareholders to nominate director candidates.

I personally thanked each of the Commissioners for the opportunity to appear at the Roundtable. I had the distinct impression that the Commissioners were thankful to hear a non-ivory tower analysis from the Committee --- a group without a specific vested economic interest and with some battlefield experience in proxy contests.

I met with reporters from the Washington Post and the Philadelphia Inquirer. Our expressed concern is that the proposed rule, with its insurmountable hurdles, if passed, would result in a sham upon the investing public --- it will be touted by the media as added shareholder protection when, in reality, it would provide none and the SEC will not revisit the issue for many years.



When we arrived home, we received messages from the California Legislature dealing with AB 2752. Corporate advocates who claim shareholder democracy is a matter for state legislation may be very surprised with what they receive from California.

Editor: Thanks to Les for representing independent shareholders so well at the Roundtable. It is extremely important that shareholders weigh in on this rule, and that we have thoughtful comments going in. Even if you just send a few sentences stating your opinion on the topic and this rule, that is important. The Commission is looking to hear from folks in their own words. You can send an email directly to Jonathan Katz, Secretary, at: rule-comments@sec.gov. Please make sure to put the rule number in the subject line of your email: File No. S7-19-03 (Comments on Shareholder Proxy Access). The deadline to comment is March 31st!

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