

**COMMITTEE OF CONCERNED SHAREHOLDERS**  
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February 20, 2004

VIA EMAIL

Mr. William H. Donaldson, Chairman  
Ms. Cynthia A. Glassman, Commissioner  
Mr. Harvey J. Goldschmid, Commissioner  
Mr. Paul S. Atkins, Commissioner  
Mr. Roel C. Campos, Commissioner  
Securities and Exchange Commission  
450 Fifth Street, NW  
Washington, DC 20549-0609

Re: Security Holder Director Nominations Roundtable  
Materials for Distribution at Roundtable

Commissioners:

I thank the Securities and Exchange Commission (“SEC”) for this opportunity to present the views of the Committee of Concerned Shareholders (“Committee”).

I. Background Of Committee And Its Proxy Contest

The Committee is a group of Individual Investors who met and organized on an Internet message board. In 2001, we engaged in a proxy contest to bring accountability to the Board of Directors of Luby’s Cafeterias, a New York Stock Exchange listed company. Our views were formed on the corporate battlefield, not in some ivory tower.

As you know, it is easy for an Individual Investor to nominate a Director-candidate, but, due to SEC Rule 14a-8(i)(8), the names of those candidates do not appear on a company’s ballot.

As a result, Individual Investors face near insurmountable hurdles to hold Directors accountable for their actions by nominating Director-candidates and effectively soliciting votes for those candidates. In part, we must:

- (1) Obtain a copy of a company’s Bylaw and Articles of Incorporation and understand the legalese;
- (2) Deal with the company and its transfer agent, who often stall, requesting thousands of dollars for a copy of the Shareholder list, which costs them little to reproduce;

- (3) Be willing to file a legal action to get that Shareholder list;
- (4) Defend against frivolous legal action by the company designed to obstruct our efforts by exhausting our funds and energy;
- (5) Learn how to use the SEC's complicated electronic filing system and deal with the Staff's responses to proxy statement filings;
- (6) Make sure that the appropriate parties are notified that the election is "contested";
- (7) Verify that our proxy statements have actually been mailed to "beneficial holders" of the stock and that votes have been counted properly;
- (8) Locate and attempt to communicate with the Proxy Voter at large Institutional Shareholders;
- (9) Hire a proxy distributor; and,
- (10) Learn the rules to be employed at the Annual Meeting when the company ignores inquires for that information.

Because I have background in law and computer science and was willing to expend nearly 1,000 hours of effort to learn the aforementioned procedures, our Committee was able to overcome those and other hurdles.

We employed ADP to distribute our proxy materials and were able to solicit about 80% of the potential votes.

Despite all of the hurdles, our Director-candidates won 24% of the votes cast and 2 of the Shareholder Proposals that we supported won 60% of the votes cast.

The net result of our campaign was that:

- (1) The then recently renewed employment contract of the company's CEO was cancelled;
- (2) The Chairman of the Board of Directors retired; and,
- (3) A white knight came in to save the company from its decline toward bankruptcy.

## II. What Did The Committee Learn From Its Proxy Contest?

We learned that ALL Shareholders need an effective mechanism to replace Directors who they believe have not acted in the Shareholders' best interests.

## III. Petition for Rulemaking (SEC File No. 4-461)

On August 1, 2002, James McRitchie, Editor of CorpGov.Net, and the Committee jointly filed Petition for Rulemaking (File No. 4-461)("Petition") with the SEC. Essentially, the Petition seeks to revoke SEC Rule 14(a)-8(i)(8) so that ALL shareholders of record can use the

Shareholder Proposal procedure to cause the names of Director-nominees to appear on the corporate ballot. The Petition could be supplemented with a “lead-nominator” approach --- only the largest Shareholder to come forward would be eligible to nominate Director-candidates. The SEC’s website shows hundreds of letters of support for our Petition.

The Petition’s clean and straightforward approach would be more efficient and would yield far superior results than proposed SEC Rule 14a-11. The Shareholder Proposal procedure has been utilized for many years. It is not an experiment in an untried system.

Some say that the Petition’s approach would provide a cheap way to affect a take-over of a company. A company can only be taken-over IF and only if the majority of Shareholders vote in favor of the take-over. If, after full disclosure and an opportunity to hear the opposing positions, the true owners want a change, they should not be denied their rights. A recent Wall Street Journal editorial stated, “After two years of debate about independent directors and auditing standards, the Disney takeover drama reminds us that the best guarantee of good ‘corporate governance’ is an open market for corporate control.”

Some say the Petition’s approach would allow unqualified candidates to run for office. However, legal and financial hurdles are likely to keep that to a minimum and such candidates are unlikely to get elected. Further, candidates are unlikely to appear where Directors and Management act fairly and competently.

Employing the Petition’s approach, Shareholders can be the watchdogs of their own investments at the 9,000 plus companies with publicly traded securities, instead of a few dozen under proposed Rule 14a-11. Institutional Shareholders do not have the interest to engage in such widespread efforts, but Individual Investors do.

#### IV. There Are Several Problems With Proposed SEC Rule 14a-11

 (1) The drafters of the rule incorrectly assume that the present SEC Rules are too costly for Institutional Shareholders to field Director-candidates. The cost of filing a bare bones proxy statement is negligible. If there were Institutional Shareholder support, one could assure a candidate’s election with less than 30 telephone calls.

(2) The drafters of the rule assume, without any factual basis, that Institutional Shareholders have the intestinal fortitude to engage in proxy contests.

(3) The drafters of the rule incorrectly assume that Institutional Shareholders could unite to reach a 5% ownership level to qualify to use the proposed rule. However, just agreeing on Director-candidates and entering into indemnity agreements would be a nearly impossible task. Further, corporate targets can easily disunite such groups by catering to the desires of a few members.

(4) The proposed rule is basically inequitable in that it does not place similar stock ownership requirements on members of a company's Nominating Committee. In most instances incumbent and prospective members of Boards of Directors own negligible amounts of a company's stock. In our proxy contest at Luby's, one of the Committee's Director nominees owned and/or controlled more stock of Luby's than that held by all incumbent members of the Board of Directors and the company's Director nominees;

(5) Even if some activist Institutional Shareholders utilized the proposed rule, Individual Investors at more than 9,000 companies with publicly traded securities would not be benefited.

(6) Proposed Rule 14a-11 completely ignores Individual Investors. We, Individual Investors not Institutional Shareholders, are the ones who are in need of effective access to a company's ballot. Luckily, our Founding Fathers had more faith in democracy than the SEC appears to have.

#### V. Provisions Of Our Petition Would Operate Very Well In The Real World

(1) Individual Director-candidates or groups of Director-candidates could easily come forward. From a practical standpoint, before declaring their candidacies, they would probably seek some indication of potential future support from Institutional Shareholders.

(2) The Institutional Shareholders could keep their legal distance from the outsider candidates since they would NOT be required to be nominators of the candidates.

This has been done. Guy Adams, an Individual Investor, owning about \$1,100 of common stock and with Institutional Shareholder support, was elected to the Board of Directors of Lone Star Steakhouse. He unseated the person who was the Chief Executive Officer, Chairman of the Board and a 20%+ shareholder.

The Institutional Shareholder support for Guy Adams trumped Lone Star's litigation efforts to trash his life and drown him in legal bills.

#### VI. Conclusion

(1) Proposed Rule 14a-11 is not a cure to lack of Director accountability, but only complicates the issues.

(2) Activist Institutional Shareholders do not need proposed Rule 14a-11.

(3) It is the Individual Investor who needs a way to achieve Director accountability through access to the company's ballot. We urge the SEC to implement our Petition for Rulemaking (File No. 4-461).

This is an historic opportunity for the SEC to do what is right for the investing public and to bring Shareholder democracy to the corporate world.

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On behalf of the Committee and our supporters --- those who wish to restore confidence in the securities markets and Director accountability --- we hope that the SEC will not let this historic opportunity slip through its hands.

Again, thank you for this opportunity to present the views of the Committee of Concerned Shareholders to the Commission.

Very truly yours,

LES GREENBERG,  
Chairman

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