



THE CHAIRMAN

MAR 28 2005

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

March 23, 2005

The Honorable John D. Dingell
2322 Rayburn House Office Building
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Dingell:

Thank you for your February 24th letter concerning the staff's recent determination to permit three companies to exclude shareholder proposals from their proxy materials. The proposals requested that the companies adopt a procedure that would provide a process by which shareholder nominees for director would be included in the companies' proxy materials.

The staff has consistently determined that shareholder proposals that would allow stockholders to nominate directors for election to the board are subject to exclusion from a company's proxy materials under Securities Exchange Act Rule 14a-8(i)(8) because they relate to an election for membership on the board of directors. Specifically, it is the staff's long-standing view that companies may exclude such proposals because the proposals would establish a procedure that may result in contested elections of directors, which is a matter more appropriately addressed under other proxy rules that the staff administers.

In Release No. 34-48626 (Oct. 14, 2003), the Commission proposed Rule 14a-11. Under the proposed rule, companies would be required to include in their proxy materials, under specified circumstances, nominees of shareholders meeting specified criteria. The Release stated that the staff had informed the Commission of its intention to take the position that a security holder proposal submitted pursuant to Rule 14a-8 providing that the company become subject to the security holder nomination procedure in proposed Rule 14a-11 would not be excludable under Rule 14a-8(i)(8). The intended staff position contained in the Release represented a change in the above-described staff position under Rule 14a-8(i)(8). Subsequently, given the passage of time since the proposal of Rule 14a-11 in Release No. 34-48626 without Commission action on the proposal, the staff concluded that it was appropriate to return to the approach that it consistently had taken prior to the publication of the Release, and as such, permitted the companies cited in your letter to exclude the proposals from their proxy materials.

The recent staff decisions implement existing Rule 14a-8, the rule that governs shareholder proposals. They do not constitute the Commission's views on proposed Rule 14a-11. The Commission will continue to consider whether there is a shareholder access rule that it should adopt. The public comments that the Commission received on proposed Rule 14a-11 raised significant issues that must be addressed in any final Commission action. I remain committed to finding a resolution to those issues.

Thank you for sharing the concerns expressed in your letter. Please do not hesitate to contact me, or to have your staff contact my staff, should you wish further information with regard to the rule proposal or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Donaldson". The signature is fluid and cursive, with the first name "Bill" and last name "Donaldson" clearly distinguishable.

William H. Donaldson
Chairman

Similar letter sent to all signatories
to the February 24th letter