

Ms Elizabeth Murphy  
Secretary  
US Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

14 August 2009

Dear Ms Murphy

**RE: File number S7-10-09, Facilitating Shareholder Director Nominations**

We are writing further to the SEC File number S7-10-09 regarding the proposed amendments to SEC Rules (the Proposal) which, if passed, would facilitate shareholder nominations for directors.

By way of background, Hermes Fund Managers Limited is owned by the British Telecom Pension Scheme, the UK's largest. Hermes manages the portfolios of over 200 other clients including many major pension schemes. Hermes Equity Ownership Services (EOS) also advises non-investment clients on governance and corporate engagement matters in respect of about US\$65 billion of equities. These clients include Ireland's National Pensions Reserve Fund, Canada's Public Sector Pension Investment Board, Australia's VicSuper, Lothian Pension Fund, Pensioenfonds PNO Media, and PKA, one of Denmark's largest occupational pension funds.

We are extremely supportive of the SEC's Proposal and assert that facilitating director nominations by shareholders will, in turn, enhance board accountability and thus go some distance in repairing the fractured relationship between companies and their owners which has been exacerbated by the recent economic downturn. We believe, further, that facilitating this process will also lead to more constructive and collaborative engagement between companies and their owners, and move the market away from the very disruptive and adversarial process of proxy contests.

Given that we broadly support the SEC's effort at a policy level, we have only a few comments on specific key points, outlined below.

**Thresholds for Holdings**

We support the SEC's proposed shareholding thresholds for submitting nominees as outlined in Section B.3 "Eligibility to Use Exchange Act Rule 14a-11." We believe, however, that shareholders should most definitely be able to aggregate holdings in order to reach the 1%, 3% and 5% thresholds required for companies of different sizes. We also commend the SEC for proposing reasonable additional disclosure requirements for shareholders or shareholder groups nominating directors.

**Controlled Companies and First-in Standard**

The Proposal asks for comments on these issues in section B.5 "Maximum Number of Shareholder Nominees to be Included in Company Proxy Materials."

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For both controlled companies and companies with dual class capital structures, we advocate that the maximum number of shareholder nominees that may be included in the company's proxy materials should be 25% of the board in its entirety, not 25% of the directors entitled to be elected by common shareholders.

In order to be able to actually promote change on a company's board, shareholders must be able to put forward a sufficient number of directors to achieve this. A single director on a board of 10-15 directors will, in most cases, be insufficient to bring about significant change. As such, in order to be practicable, the final rule should allow shareholders to nominate up to 25% of the board as a whole.

As well, we support the SEC's suggested "first-in" standard whereby a company would be required to include in its proxy statement the nominee(s) of the first nominating shareholder or group which submits nominee(s). We believe that this standard will best give effect to the rule and allow long-term responsible shareholders to submit nominees for inclusion in the company's proxy materials. If the standard were to be based on size of shareholding, for example, we are concerned that long-term owners of companies with index-tracking portfolios might essentially be frozen out of the process.

#### **Ability to Correct Technical Defects**

In Section B.6 "Notice and Disclosure Requirements," the Proposal outlines various timelines and deadlines for submissions and communications between the company and shareholders. We emphasize that shareholders should be given the opportunity to correct minor technical defects in their filings with both companies and the SEC and that companies should be urged to deal in good faith with shareholders submitting nominees to the board at all times. Again, the final SEC rule should clarify this expectation in an effort to give full effect to this rule.

#### **Length of Statement of Support**

In Section B.7.a "Inclusion of a Shareholder Director Nominee," the Proposal suggests that a nominating shareholder's statement in support of its candidate should not exceed 500 words.

We assert that this is a reasonable and appropriate default limit and appreciate its consistency with current limits on supporting statements for shareholder proposals generally. However, we urge the SEC to be flexible in the application of this part of the rule in order to ensure that a nominating shareholder's statement in support of its candidate should be able to be equal in length to any statement that the company may make in its proxy materials regarding individual nominees, whether proposed by the company or by shareholders. Thus if, for example, a company's statement in opposition to a shareholder nominee exceeds 500 words, then the shareholder's statement in support should equally be allowed to exceed 500 words. Doing so would achieve parity and ensure that shareholder nominees are not unfairly discriminated against in the company's proxy material.

In closing, we are pleased to lend our support to the SEC with respect to this proposal. Please do not hesitate to contact me should you have further questions for us.

Yours truly,



Bess Joffe  
Associate Director