THE CASE FOR POCKETS OF SHAREHOLDER ACTIVISM: SHAREHOLDER PROPOSAL IN THE PHILIPPINES*

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Proxy access is a general corporate concept which basically means shareholder voting as shareholder participation in the corporation. The proxy access rules in the Philippines are currently limited to the nomination of directors and to "Just Vote No" campaigns similar to the rules in the United States intended to block management proposals. However, shareholders in the United States enjoy wider proxy access through direct proposals, also known as the "shareholder proposal rules,"[1] which enable them to directly recommend corporate proposals for the consideration of other shareholders during annual or special meetings.

There are several factors that inhibit the development of a similar shareholder proposal system within the Philippine proxy access framework. For one, the intricate ownership structure of family-dominated holding companies in the Philippines has created a passive shareholder culture. In addition, the lower rank of the Philippines in market capitalization compared to other more developed countries[2] has hampered the development of a transparent and quality corporate disclosure system. As a result, Philippine shareholders are not fully apprised of whether or not corporations are acting towards their best interests.

Despite an underdeveloped disclosure framework in the Philippines, the growth of a similar shareholder proposal system may still be encouraged to allow for "pockets" of shareholder activism, such that Philippine shareholders will no longer be relegated to merely electing directors, or approving, abstaining, or rejecting board or management proposals during annual or special meetings. Instead, shareholders, especially minority shareholders, will

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[1] Securities Exchange Act of 1934, Rule 14A; Exchange Act Rule 141-8.

[2] World DataBank—World Development Indicators (WDI), *available at* http://databank.worldbank.org (last updated Jan. 8, 2013).

be empowered to directly make proposals for the consideration of their fellow shareholders and hence actively participate in the corporation. Shareholder proposal rules will thus allow further proxy access to shareholders which would, in turn, promote corporate governance discourse in the Philippines.

I. CURRENT PROXY ACCESS RULES IN THE UNITED STATES

Section 14(a) and Regulation 14Aof the U.S. Securities Exchange Act of 1934 ("Exchange Act"), as amended, are the predecessors of the shareholder proposal rule in the United States. Section 14(a), also known as "the proxy rule," generally provides that it shall be unlawful for any person to solicit or permit the use of his name to solicit proxies with respect to securities registered under Section 12 of the Exchange Act. Proxies must be solicited according to certain procedures outlined in Regulation 14A.

Rule 14a-3 of the Exchange Act provides that no solicitations shall be provided unless each person solicited has been furnished with a proxy statement that contains the information required by Exchange Act Regulation 14(a).

"Just Vote No" Campaigns

Individual and institutional shareholders in the United States may signify their dissatisfaction against a proposed corporate measure through a "Just Vote No" campaign. Since they are not statutory solicitations, these campaigns are more cost-effective than actual proxy solicitations under Exchange Act Regulation 14A. Yet they can also sway and influence other shareholders into voting against a proposed measure.[3]

There are two ways of conducting a "Just Vote No" campaign. First, a shareholder can publicly state and communicate his viewpoint to other shareholders short of engaging in an actual proxy solicitation to collect votes under Exchange Act Regulation 14A. He or she can urge other shareholders to

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[3] Steven Spencer & Young Woo, Special Counsel & Associate (respectively), Schulte Roth & Zabel LLP, *Considerations for "Just Vote No" Campaigns, available at* http://www.srz.com/files/News/5333c42b-1659-4caf-9540-c10b4a6a038c/Presentation/NewsAttachment/26d52d60-ac91-404e-8bbd-67bfae1332d0/filesfilesArticle%20-%20AI%20-%20fall06%20-%20Considerations.pdf (last visited Apr. 30, 2012).

vote similarly by indicating his or her vote and the reasons behind, provided that the entire process is in accordance with certain exceptions under Rule 14a-1(l)(2)(iv) of the Exchange Act.

The second way is through the statutory proxy solicitation process, where "No" votes are indicated in the proxy solicitation form itself. If a "Just Vote No" campaign would be in the nature of the statutory proxy solicitation process, the "Just Vote No" campaigner is prohibited, at any time, from actively soliciting from another shareholder (directly or indirectly), and furnishing or otherwise requesting that the latter revoke, abstain, consent or authorize a vote, according to the exemptions under Exchange Act Rule 14A.[4]

II. CURRENT PROXY ACCESS RULES IN THE PHILIPPINES

As mentioned above, proxy access in the Philippines is limited to the election of directors and the solicitation of votes against proposed actions by the registrant. Proxy access is governed by Section 20of the Philippine Securities Regulation Code[5] ("Philippine SRC") and Rule 20[6] of its Amended Implementing Rules and Regulations.

Unlike Section 14(a)(1) of the U.S. Exchange Act, Section 20 of the Philippine SRC does not provide general guidance on the illegality of the solicitation of proxies for registered securities. It merely provides that proxies must be solicited and issued in accordance with the rules and regulations by the Philippine Securities and Exchange Commission ("Philippine SEC").[7] Proxies must be in writing, signed by the stockholder or his authorized representative, and filed before a scheduled meeting.[8] They are valid only for the meeting for which they are intended, which in no case would exceed five years.[9] Brokers should not give or provide proxies on behalf of a customer without such customer's written authorization.[10]

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[4] Exchange Act Rule 14a-2(b)(1).

[5] Rep. Act No. 8799 (hereinafter "Philippine SRC") (2000).

[6] AMENDED IMPLEMENTING RULES AND REGULATIONS OF REP. ACT NO. 8799 (hereinafter "Philippine SRC Rules"), Rule 20 (2003).

[7] § 20.1.

[8] § 20.2.

[9] § 20.3.

[10] § 20.4.

Philippine SRC Rule 20 is by no means as comprehensive as the Exchange Act Regulation 14A, which consists of 101 subsections. However, it does follow the basic procedure under Exchange Act Regulation 14A. It provides that a registrant must transmit a written information statement, proxy form, and management report to every security holder of the class that is entitled to vote.[11] Moreover, it contains standard provisions on date of filing,[12] fees,[13] number of copies,[14] and time of distribution.[15]

The report to be furnished to the stockholders includes consolidated audited financial statements,[16] information concerning disagreements with accountants on accounting and financial disclosures,[17] management's discussion and analysis or plan of operation,[18] a brief description of the general nature and scope of the business of the registrant and its subsidiaries,[19] the identity of the registrant's directors and their executive officers, including their principal occupation or employment, name and business of any organization by which such persons are employed,[20] the market price of and dividends of the registrant's common shares,[21] a discussion on compliance with leading practices on corporate governance,[22] and an undertaking to provide a copy of the registrant's annual report.[23]

The usual formal requirements such as bold-face types,[24] blank spaces for dating the proxy card,[25] signature of the shareholder or his duly authorized representative,[26] and the filing with the Corporate Secretary prior to the holding of the shareholders' meeting[27] are likewise provided. It further

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[11] PHILIPPINE SRC RULES, Rule 20(3)(a).
[12] § (3)(C)(i).
[13] § (3)(C)(ii).
[14] § (3)(C)(iii).
[15] § (3)(C)(iv).
[16] § (4)(A)(i).
[17] § (4)(A)(ii).
[18] § (4)(A)(iii).
[19] § (4)(A)(iv).
[20] § (4)(A)(v).
[21] § (4)(A)(vi).
[22] § (4)(A)(vii).
[23] § (4)(A)(viii).
[24] § (5)(A)(i).
[25] § (5)(A)(ii).
[26] § (5)(A)(iv).
[27] § (5)(A)(v).

mentions that a proxy must allow a shareholder to choose whether to approve, disapprove, or abstain with each matter to be decided upon during the meeting.[28]

If a proxy form provides for the election of directors, it should set forth the name of the director,[29] the authority by the shareholder to vote,[30]withdrawal of such authority,[31] or provision of discretionary authority to vote on certain matters.[32]

Similar to Exchange Act Section 14(e), Philippine SRC Rule 20(9) provides that:

> No information subject to this Rule shall be made containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.[33]

As for shareholder proposals, the Philippine Revised Code of Corporate Governance mandates that "Although all stockholders should be treated equally or without discrimination, the boards of corporations should give minority stockholders the right to propose the holding of meetings and the **items for discussion** in the agenda that relate to the business of the corporation."[34] (Emphasis supplied) However, this is not fleshed out in detail by statute or rules under the Philippine SEC. It is only an exhortation on the part of the boards of directors of corporations. The imposition of administrative penalties on a corporation by the Philippine SEC in case of non-compliance with the Philippine Revised Code of Corporate Governance has not promoted widespread use of such right due to the lack of a shareholder

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[28] § (5)(B).
[29] § (5)(C).
[30] § (5) (C).
[31] § (5)(C)(i. - iii.).
[32] § (5)(E).
[33] § (9)(A).
[34] Sec. and Exchange Comm'n. (hereinafter "SEC") Mem. Circ. No. 6 art. 6(b) (2009).

proposal infrastructure in the Philippines. Insofar as proxy access in the Philippines is concerned, the existence of such right remains a latent and untapped avenue for shareholder activism.

If compared to that in the United States, proxy access in the Philippines can be described as quite spartan, providing just the basic and minimum standards of proxy access to shareholders. The pertinent Philippine laws and rules provide only the standard compliance requirements of disclosures for public or listed corporations. Similar disclosures include "written information statement and proxy form (in case of a proxy solicitation) containing the information specified under Philippine SEC Form 20-IS or the Definitive Information Statement (the equivalent of an Exchange Act Form DEF 14-A in the United States) and a management report to every security holder of the class that is entitled to vote."[35] The rest of the provisions are the basic and standard provisions for proxy solicitation, such as form of the proxy,[36] filing requirements on distribution and fees,[37] the documents to be included in the management report,[38] the obligations to mail shareholders' meeting materials to security holders,[39] to name a few.

The closest Philippine proxy access counterparts of the U.S. proxy access rules on the shareholders' access to the nomination of directors and "Just Vote No" campaigns are only two sentences devoid of any detail. They only describe the existence of these two rights and nothing more.

Under the section on "Special Provisions Applicable to Solicitation of Votes Other Than By The Registrant,"[40] any person or group of persons other than the registrant may suggest items to be taken up in an annual or special stockholders' meeting.[41] In case of suggestions, the person or groups of persons must attach to and distribute the following information together with the proxy form:

> a. The name of the solicitor and person who shall shoulder the expenses, and the mode of solicitation;

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[35] PHILIPPINE SRC RULES, Rule 20(3)(A).
[36] § (5).
[37] § (5)(c).
[38] § (4).
[39] § (6).
[40] § (8).
[41] § (8)(A).

> b. **In case of election of directors**, the name/s of nominee/s including his business experience for the past five (5) years, involvement in legal proceedings, family relationship with any other nominee, incumbent director or officer, and his interest, direct or indirect, by security holdings or otherwise; (Emphasis supplied)
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> c. A discussion of the **reason/s for the solicitation of votes against the proposed action/s by the registrant;**[42] (Emphasis supplied)

The highlighted portions are the only provisions that mention the election of directors and campaigns to block management proposals. Compared to their U.S. counterparts, they are only mere hints at the existence of proxy access tools available to Filipino shareholders. There are also no rules or provisions elaborating on the implementation of these two provisions.

There is no provision similar to Exchange Act Rule 14a-8 in the Philippines for shareholder proposals. Filipino shareholders cannot directly propose items for inclusion in the proxy materials for shareholder vote during shareholder meetings. These items are instead directly proposed by management.[43] The proxy solicitation forms contain boxes to allow shareholders only to "choose between approval, or disapproval of, or abstention with respect to, each separate matter referred to therein as intended to be acted upon."[44]

It is quite evident that the Philippine proxy access system is in its stages of infancy compared to the advanced proxy access system of the United States. While it does provide shareholders the access to nominate directors for elections and to solicit votes against management proposals, Filipino shareholders remain passive participants in that they cannot directly propose issues of their own interest for consideration by other shareholders.

What may be appropriate for the proxy access system in the US may not necessarily be appropriate for or applicable to the Philippine proxy access framework. The access provided by shareholder proposals in the US may be

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[42] § (8)(B)(i).
[43] § (5)(A)(iii).
[44] § (5)(B).

irrelevant or inapplicable to the Philippines due to a variety of factors, e.g. the novelty of corporate governance in the Philippines, the level of sophistication and transparency of disclosures, the level of protection of minority shareholders, board composition, and ownership concentration. These shareholder rules might be underutilized or be rendered of no use at all by Filipino shareholders. The enactment of shareholder proposal rules in the Philippines may seem to be an unnecessary exercise. However, a shareholder proposal system in the Philippines may provide "pockets" of shareholder activism in what would otherwise be a passive Filipino shareholder culture.

A. Ownership Concentration

Ownership concentration is one of the most crucial factors that may hinder the effective implementation of shareholder proposal rules in the Philippines. Since the industrial elite is composed of wealthy families that have preserved their businesses over several generations, members of these families have become the controlling shareholders of the largest family-based corporations in the Philippines.[45] The pyramid structure of a holding corporation, whereby the largest shareholders are usually members of these wealthy families in closely-related family corporations, is typical in the Philippines.

The publicly listed company sector generally shows a similar degree of ownership concentration. On the average, the largest single shareholder owns 41% of outstanding shares. The five largest shareholders own 65% and the top twenty shareholders own 76% of outstanding shares.[46]

B. Capital Markets and Market Profiles

The market capitalization of listed corporations as a percentage of gross domestic product ("GDP") in the Philippines is 79%, compared to 117% in the United States.[47] In terms of US$, the market capitalization of listed

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[45] Association for Sustainable and Responsible Investment in Asia (ASRIA), SRI in Asian Emerging Markets: Philippines, *available at* http://www.asria.org/publications/lib/country/philippines.pdf (last visited Feb. 14, 2013).

[46] *Id.*

[47] World DataBank—World Development Indicators (WDI), *available at*http://databank.worldbank.org (last updated Jan. 8, 2013).

corporations in the Philippines is only about US$157 billion, dwarfed by the US$17 trillion market capitalization of listed corporations in the United States in 2010.[48]

There are only 328 Philippine corporations that are listed with the Philippine Stock Exchange, the only national stock exchange in the Philippines.[49] The average free float of all listed companies in the Philippine Stock Exchange is around 36%. Controlling shareholders, defined as the largest five shareholders, own up to 80% of the voting shares in seven out of the thirty companies that compose the Philippine Stock Exchange Index or PSEi.[50] In contrast, there were 2,238 corporations listed on the NYSE Euronext alone in 2010.[51]

C. Corporate Governance Laws and Regulations

The Philippines still has some catching up to do in terms of corporate governance. In 2010, the Philippines ranked lowest in the Asian Corporate Governance Association market survey of eleven Asian countries in terms of corporate governance.[52] This survey had five categories: Corporate Governance ("CG") Rules and Practices, Enforcement, Political and Regulatory Environment, International Financial Reporting Standards, and CG Culture. The Philippines scored the lowest in the categories of CG Rules and Practices, Enforcement, and CG Culture.[53]

The Philippines has tried to keep up with the reforms initiated by Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley"). The Sarbanes-Oxley Act was enacted as a reaction to the Enron debacle in the United States in 2002. It

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[48] *Id.*

[49] Phil. Stock Exchange, Inc., Listed Company Directory, *available at*http://www.pse.com.ph/stockMarket/listedCompanyDirectory.html (last visited May 2, 2012).

[50] Phil. Stock Exchange, Inc., Market Activity, *available* at http://www.pse.com.ph/stockMarket/marketInfo-marketActivity.html?tab=0 (last visited May 2, 2012).

[51] World Federation of Exchanges, Number of Listed Companies, *available at*http://www.world-exchanges.org/statistics/time-series/number-listed-companies (last visited Apr. 25, 2012).

[52] http://www.businessmirror.com.ph/home/banking-a-finance/7000-philippines-lowest-in-corporate-governance-survey (last visited April 24, 2012).

[53] *Id.*

contained reforms for corporate governance, auditing and accounting accountability, and increased board and management oversight.[54]

In 2000, a new Securities Regulation Code[55] was enacted by the Philippine Congress to supersede the former Revised Securities Act of 1982. Some of the more salient amendments of the law since then strengthened the prosecution and enforcement powers of the Philippine SEC, expanded the scope of rules on insider trading and market manipulation, increased the protection of minority investors by institutionalizing rules on mandatory tender offers, and further delegated regulatory powers to self-regulatory organizations.[56]

In 2002, the Philippine SEC issued Memorandum Circular No. 2 that created a "Code of Corporate Governance" to be observed by public or listed corporations. These corporations are mandated to submit a Manual of Corporate Governance to embody the ideals and principles of Western corporate governance measures following the enactment of Sarbanes-Oxley. Corporations are required to complete annual self-rating forms[57] to assess their compliance with the Code of Corporate Governance and their own Manuals of Corporate Governance.[58] Compliance with these self-rating forms and Manuals are under pain of administrative penalties.[59] In 2009, the Philippine SEC issued a Revised Code of Corporate Governance to amend the previous one issued in 2002.[60]

Furthermore, several institutions and advocacy groups emerged to promote good governance practices in the Philippines. These include the Institute of Corporate Directors,[61] the Corporate Governance Institute of the

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[54] 15 U.S.C. §§ 7201-7266 (2012).

[55] Philippine SRC (2000).

[56] *Supra* note 47.

[57] SEC Corporate Governance Scorecard, *available at* http://www.sec.gov.ph/download/corp_gov.html (last visited Apr. 26, 2012).

[58] SEC Mem. Circ. No. 6, art. 6(b) (2009); Revised Code of Corporate Governance, *available at* http://www.sec.gov.ph/laws/corporate_governance/Revised%20Code%20CG.pdf (last visited Apr. 26, 2012).

[59] SEC Mem. Circ. No. 6, art. 6(b) (2009).

[60] *Supra* note 58.

[61] *Website available at* http://www.icdcenter.org/cg/ (last visited April 26, 2012).

Philippines,[62] and the Asian Institute of Management-Hills Governance Center.[63] These groups offer orientation and training sessions required by the Philippine SEC and the *Bangko Sentral ng Pilipinas* (Central Bank of the Philippines) for directors as prerequisites for appointment for directorship.[64]

In 2004, the Philippine Congress enacted the Philippine Accountancy Act[65] to update the Philippines to post-Sarbanes-Oxley accounting standards. The Philippines also started to require corporations to adapt the International Financial Reporting Standards ("IFRS") in January 1, 2005. The Philippines initially implemented this by enacting the Philippine Accounting Standards ("PAS") in place of generally accepted accounting principles ("GAAP").[66] The IFRS are more stringent accounting rules that many countries now follow than the outdated GAAP. The Philippine SEC further enhanced these accounting reforms through the implementation of the Philippine Financial Reporting Standards ("PFRS") on July 1, 2009.[67] Other reforms included the strengthening of The Anti-Money Laundering Act of 2001[68] and the enactment of the Corporate Governance Guidelines for Companies Listed on the Philippine Stock Exchange.[69] In fact, a Senate bill in the Philippines entitled "Corporate Reform Act of 2004,"[70] a proposed law largely patterned after the Sarbanes-Oxley has been pending congressional review since 2004.

D. Level of Disclosures and Transparency

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[62] *Website available at* http://www.picpa.com.ph/CPE/Accredited-CPE-Providers/Corporate-Governance-Institute-of-the-Philippines.aspx (last visited Apr. 26, 2012).

[63] *Website available at* http://www.aim-hills.ph/ (last visited Apr. 26, 2012).

[64] *Supra* note 47.

[65] Rep. Act No. 9298 (2004).

[66] Adoption of Philippine Accounting Standards, *available at*http://www.sec.gov.ph/laws/memorandumcircular/CY%202005/sec-memo-8,s2005.pdf (last visited May 12, 2013).

[67] Philippine Financial Reporting Standards, *available at* http://www.sec.gov.ph/accountantsinfo/pfrs/pfrs%20adopted%20by%20sec%20as%20of%2012312011.pdf (last visited May 12, 2013).

[68] Rep. Act No. 9160 (2001).

[69] Phil. Stock Exchange, Inc., Corporate Governance Initiatives, *available at* http://www.pse.com.ph/corporate/corporateGovernanceInitiatives.html?tab=3 (last visited May 1, 2012).

[70] S. No. 209, 13th Congress (2004).

Both the Philippine SEC and the Philippine Stock Exchange ("PSE") enforce the "Full Disclosure Approach"[71] to regulatory disclosures of public, registered, and listed corporations. However, the quality of these disclosures pales in comparison to that required by the United States Securities and Exchange Commission ("US SEC").

For one, the Philippine SEC and the PSE have not entirely coordinated their filing systems. The PSE has an electronic filing system (OdiSy),[72] but the Philippine SEC does not have any computerized filing database yet comparable to that of the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR")[73] of the US SEC. As a consequence, Philippine corporations still need to file paper versions of their disclosures with the Philippine SEC. However, not all forms may be electronically filed with the PSE. Some forms are still required to be filed in paper form.[74]

To give a concrete picture of the dilemma, a SEC Form 17-C (Current Report)[75] is required to be electronically filed with the PSE within 10 minutes after the occurrence of a material event. Such form, having been filed with the PSE, should be considered as contemporaneously filed with the Philippine SEC under an electronic filing system. Unfortunately, the corporation must still file a paper version of this SEC Form 17-C at the Philippine SEC office within the day due to lack of an electronic filing system.

The PSE website allows the public to view and retrieve disclosures. On the other hand, the Philippine SEC does not have a database for the public to view and retrieve uploaded forms of the disclosures filed with the PSE. This lack of coordination in the disclosure systems between the PSE and the Philippine SEC leads to a lack of transparency and access to disclosures.

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[71] World Bank, Report on the Observance of Standards and Codes—Corporate Governance Country Assessment (Philippines 2006), *available at*http://www.worldbank.org/ifa/rosc_cg_phl_07.pdf (last visited Apr. 25, 2012).

[72] *Website available at* https://odisy.pse.ph/ (last visited Apr. 25, 2012).

[73] Also known as Electronic Data Gathering, Analysis and Retrieval, *available at* http://www.sec.gov/edgar.shtml (last visited May 1, 2012).

[74] Phil. Stock Exchange, Inc., Online Disclosure System Rules, *available at*http://www.pse.com.ph/stockMarket/listedCompaniesRules.html?tab=0 (last visited May 1, 2012).

[75] The US equivalent would be Exchange Act Form 8-K.

E. Investor Protection

Corporation laws in the Philippines provide only the standard investor protection rules, which include the right to vote on all matters that require shareholders' consent or approval,[76] pre-emptive rights to all stock issuances of the corporation,[77] the right to inspect corporate books and records,[78] the right to information such as financial statements,[79] the right to dividends,[80] and appraisal rights.[81] In addition, there are tender offer rules[82] and the right to bring derivative or class action suits.[83]

The various factors discussed above do not bode well for shareholder activism in the Philippines. On a fundamental level, the web-like family ownership structure of corporations and holding firms in the Philippines is exactly the opposite of the dispersed, institutional shareholder system of the United States, an arrangement that has largely fueled shareholder activism. In addition, the lack of transparency and access to disclosures exacerbates the information asymmetry between management and shareholders. In effect, shareholders do not become fully apprised of corporate and management policies and proposals since any possible issue that may become ripe for shareholder activism does not get raised.

III. SHAREHOLDER PROPOSALS IN THE UNITED STATES

Exchange Act Section 14(a) was enacted to promote the right of "fair corporate suffrage" in corporate communications between management and shareholders.[84] The general mandate of the US SEC is to promulgate the rules

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[76] CORP. CODE, § 16. The Corporation Code of the Philippines is *Batas Pambansa Blg.* 68 (1980).

[77] § 39.

[78] § 74.

[79] § 75.

[80] § 43.

[81] § 81.

[82] Philippine SRC, at § 19.

[83] *See also* A.M. NO. 01-2-04-SC, entitled "Re: Proposed Interim Rules of Procedure Governing Intra-Corporate Controversies Under R.A. No. 8799," Mar. 13, 2001.

[84] Amy Goodman et al., A Practical Guide to SEC Proxy and Compensation Rules 12-14. (5th ed., 2011).

and regulations to prescribe the form, content, and manner in which reporting companies should conduct proxy solicitations.[85]

The US SEC adopted Exchange Act Rule 14a-8 based on the general corporate law principle that shareholders should be allowed to submit proposals for fellow shareholder consideration during shareholders' meetings.[86] Under Exchange Act Regulation 14a-8, a shareholder who wishes to submit a shareholder proposal must have continuously held at least US$2,000 in market value, or 1% of the corporation's securities entitled to be voted on the proposal at a meeting, at least one year by the date the shareholder submits such proposal.[87] A shareholder may submit no more than one proposal to a corporation for a particular shareholders' meeting.[88] As a general rule, the corporation is obliged to include a shareholder proposal in its proxy materials, unless the shareholder failed to observe some procedure or eligibility requirement, or unless the proposal shall be excluded on the basis of any of the thirteen substantive bases for exclusion under Exchange Act Regulation 14a-8.[89]

A. Development of Exchange Act Rule 14a-8

Previously, these proposals were subject to abuse because most shareholders did not attend these meetings. Back then, corporate communications were mostly conveyed via proxy.[90] The absentee shareholders would instead submit omnibus proxies that would approve, adopt, and ratify all the minutes of the boards of directors. All corporate actions and transactions were approved without actual shareholder votes.[91]

The shareholder proposal rule has undergone several changes since 1934. In 1939, the US SEC declared as misleading, within the meaning of the proxy rules, the omission of shareholder proposals by management which it was aware of prior to printing of these proposals in the proxy materials.[92] The

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[85] *Id.*
[86] *Id.*
[87] Exchange Act Rule 14a-8(a) & (b).
[88] Exchange Act Rule 14a-8 (c).
[89] *Supra* note 84.
[90] *Id.*
[91] *Id.* This is also the current practice in the Philippines.
[92] *Id.*

US SEC then required that persons who solicit proxies should indicate how they would have voted on the matters not described in the proxy materials but they knew would be presented on the floor during the meeting itself. This laid the foundation for Exchange Act Rule 14a-8.[93]

The US SEC then proceeded to amend the rules further to allow direct shareholder voting on the floor. In 1942, the US SEC required corporations to include shareholder proposals it was given prior notice of by the security holder.[94] In 1947, the US SEC amended the proxy rules to require that if the corporation disagrees with any shareholder proposal, a corporation should comment and request for its omission from a corporation's proxy materials.[95]

The Dodd-Frank Wall Street Reform and Consumer Protection Act[96]("Dodd-Frank") resolved to grant the US SEC the authority to adopt proxy rules.[97] The US SEC then adopted Exchange Act Rule 14a-8(i)(8) that requires corporations to include shareholder proposals in their proxy materials, unless the proposals fall under certain exclusions, such as violations of law, violations of proxy rules, the absence of power or authority of the corporation to implement, among others.[98]

B. Exclusions to Shareholder Proposals

The basic rationale for shareholder proposals is to enable shareholders to propose items to be directly taken up during shareholders' meetings. However, not all types of proposals may be incorporated for inclusion into a corporation's proxy materials. Aside from the exclusions as earlier discussed, these proposals are subject to two tests: (1) the "economic relevance" test[99] and (2) the "ordinary business exclusion" test.[100]

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[93] *Id.*

[94] *Id.*

[95] *Id.*

[96] 12 U.S.C. § 5567 (2006).

[97] SEC Release No. 34-56914 (Dec. 6, 2007), at 9-21.

[98] Exchange Act Rule 14a-8(i).

[99] JOHN COFFEE & HILLARY SALE, SECURITIES REGULATION: CASES AND MATERIALS 1242 (2009); *See also* Exchange Act Rule 14a-8(i)(5).

[100] *Id.*; *See also supra* Exchange Act Rule 14a-8(i)(7).

In order to pass the "economic relevance" test, a proposal must relate to corporate operations that are at least five percent or more of the corporation's total assets at the end of its most recent fiscal year, and at least five percent or more of the corporation's net earnings and gross sales for its most recent fiscal year. The proposal must also significantly relate to the business of the corporation.[101] On the other hand, the "ordinary business exclusion" test provides that a proposal must not deal with a matter that relates to the corporation's business operations.[102] This is based on the idea that "management cannot exercise its specialized talents effectively if corporate investors assert the power to dictate the minutiae of daily business decisions."[103]

The US SEC opined in a 1976 Adopting Release that any proposal that has a "major implication" would be considered "beyond the realm of an issuer's ordinary business operations," and therefore would fall outside the ambit of the ordinary business exclusion.[104]

The US SEC elaborated on the "ordinary business exclusion" test:[105]

> Certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct oversight…such as hiring…decisions on production quality and quantity…However, proposals…on sufficiently significant social policy issues…generally would not be considered to be excludable…because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.
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> The second consideration relates to the degree to which the proposal seeks to "micro-manage" the company by probing too deeply into matters of a complex nature upon which shareholders as a group, would not be in a position to make an informed judgment.[106]

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[101] Exchange Act Rule 14a-8(i)(5).

[102] *Supra* note 99.

[103] Medical Comm'n. for Human Rights v. Sec. & Exchange Comm'n., 432 F.2d 659, 679 (D.C Cir. 1970) *vacated as moot*, 404 U.S. 403 (1972).

[104] US SEC Adopting Release (1976), at 45.

[105] Exchange Act Rule 14a-8(i)(7).

[106] *Supra* note 84, at 44-45.

In the same Adopting Release, the US SEC further clarified that "ordinary business proposals" may be considered to encompass significant social, economic, and political considerations even though they may concern what would be considered as routine business operations. For instance, while the operation of a nuclear power plant is the primary business of a corporation, proposals regarding significant health, safety, and environmental considerations shall not be excluded, applying the ordinary business proposal exclusion rule.[107]

Corporations are entitled to contest the inclusion of these proposals but they have the burden to prove omission thereof to the US SEC.[108] Corporations usually rely on the "economic relevance test" and the "ordinary business exclusion test" in order to thwart any proposal that management may deem too controversial or political.[109] The shareholders who have presented the proposal are free to rebut the opinion of the corporation and may likewise seek recourse by requesting a comment from the US SEC.[110] The US SEC may then issue an opinion explaining the particular proposal's allowance or disallowance, or stating its refusal to comment on the matter.[111]

IV. USEFULNESS OF SHAREHOLDER PROPOSALS IN THE UNITED STATES

Apart from the usual proxy contest, shareholder proposals serve as another means for shareholder communications. Corporations have become more open to implementing the proposals of these activist shareholders in recent years. In many cases, activist shareholders are able to persuade corporations to arrive at a compromise short of an actual shareholder proposal or proxy fight.[112] In short, shareholder proposals are effective tools for institutional activists to directly pressure corporations.

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[107] *Supra* note 104, at 12-45.
[108] Exchange Act Rule 14a-8(g) & 14a-8(m)(1).
[109] *Supra* note 99.
[110] Exchange Act Rule 14a-8(m)(2).
[111] *Id.*
[112] *Supra* note 84, at 10-41.

A. The Pressure for Corporate Changes

As a form of a corporate communication rule, shareholder activists can utilize the shareholder proposal mechanism in order to pressure corporations to effect major corporate changes. Requirements for the filing of proxy and solicitation materials under Exchange Act Rule 14a-12 entail greater time and expense for shareholders. Corporate raiders, insurgents, and activist investors use shareholder proposals as substitutes for hostile tender offers. This allows an investor to press for greater corporate changes with lesser time and money.[113] Hence, the shareholder proposal rule allows shareholders, both individual and institutional alike, a far more considerable, cost-effective, and proactive access to the proxy access system.

B. The Rise of the Large Institutional and Hedge Fund Shareholder Activists

Large institutional activist shareholders may forego the preparation of solicitation and proxy materials and use shareholder proposals instead to oppose a solicitation by management or any other person or group of persons[114] via a more expeditious and cost-effective way of persuading others to vote against management initiatives.[115]

Large institutional investors exert more pressure and influence over individual shareholders due to their sheer size and fiscal impact on a corporation.[116] They are "able to put enough pressure on management to convince the company to implement the proposal without going through with a vote."[117]

Prior to the 1980s, institutional shareholders would "vote with their feet"[118] to signify their lack of vote of confidence with a management proposal

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[113] *Id.* at 10-43.

[114] Exchange Act Rule 14a-12(c).

[115] *Id.*

[116] Jason Loring & C. Keith Taylor, *Shareholder Activism: Directorial Responses to Investors' Attempts to Change the Corporate Governance Landscape*, 41 WAKE FOREST L. REV. 321 (2006).

[117] Marc Follardori, Shareholder Proposals in Preparation of Annual Disclosure Documents 2004, at 25, 91 (Klaus Eppler et al. eds., 2004).

[118] *Id.*

during a shareholders' meeting. As these institutional shareholders grew in size and capitalization, they were allowed greater leeway in voting. However, these large institutional shareholders have fiduciary duties to vote in their clients' best interests. They promote and support corporate action that would further their clients' interests.[119] Their sheer size and fiscal capacity allows them to press these interests.

Institutional investors "see governance as a means to improve the general quality of their investments, and provide assurances and reduce risk of negative returns in the event of market downturn."[120] As a result, they "will continue to press for stronger levers of power over election of directors, higher standards for directors to adhere to in exercise of their fiduciary duty, and more stringent fiduciary requirements for directors even to monitor corporate compliance."[121] The shareholder proposal rules thus incentivize these large institutional shareholders to take the initiative to make proposals for the benefit of their clients.

Hedge funds are activist investors who use proxy fights to force corporate sales, restructurings, dividend issuances, and management changes to pursue their own interests.[122] The combined number of shares, the unified fiscal strength, and political leverage of the institutional investors, and hedge fund investors allow these institutional investors to threaten management to consider their shareholder proposals.[123] An activist investor who has successfully acquired a substantial position in tandem with an announcement of lack of confidence in management can generate extreme market and management receptivity.[124]

C. Social Responsibility Proposals and Issue-Oriented Activists

The US SEC allows shareholder proposals that "promote general, economic, political, racial, religious and social causes." A proposal may be

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[119] *Id.*

[120] Carol Brancato & Michael Price, *The Institutional Investor's Goals for Corporate Law in the Twenty-First Century*, 25 DEL. J. CORP. L. 35, 39 (2000).

[121] *Supra* note 116.

[122] *Supra* note 84, at 9-57.

[123] *Id.*

[124] *Id.*at 9-42.

disallowed only if it was "not significantly related to the business of the issuer or is not within the control of the issuer."[125]

Many of these proposals have to do more with political and social issues than the usual issues on profit maximization of corporations.[126] Shareholder proposals have increasingly targeted corporate social responsibility ("CSR") issues such as labor and human rights, board diversity, labor standards, and even climate change.[127] For instance, shareholder proposals may deal with CSR issues such as fair labor practices in other countries where the corporation operates factories, the amount of charitable contributions that a corporation may take out of the corporate coffers, and the relocation of plants and factories that may disrupt local communities.[128] Others include corporate political contributions, board diversity, and pay disparity.[129] In fact, many of these socially oriented shareholder proposals end up as negotiated settlements with the corporation.[130] The US SEC has been quite lenient with allowing these social- and public policy-themed shareholder proposals by permitting them to pass the economic relevance and ordinary business test.[131]

D. Mandatory By-laws

In recent years, shareholders in the United States have also increasingly utilized shareholder proposals to propose mandatory amendments to by-laws, provided that such proposals are economically relevant and do not pertain to mere business matters of the corporation. Shareholders cannot directly propose by-laws without proxy access via shareholder proposals. For instance, under Section 109 of the Delaware Corporation Law, by-laws may be proposed, amended, or repealed by the incorporators or directors. Shareholders may only adopt, amend, or repeal bylaws upon proposal of the directors and/or management.[132] This has caused a conflict between Exchange Act 14a-8 and Section 109 of the

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[125] Dalia Tsuk Mitchell, *Shareholders as Proxies: The Contours of Shareholder Democracy*, 63 WASH. & LEE L. REV. 1503 (2006).

[126] HAROLD BLOOMENTHAL & SAMUEL WOLFF, 3E SEC. & FED. CORP. LAW § 24:85 (2nd ed.)

[127] *Supra* note 85 at 10-47.

[128] *Id.*

[129] *Supra* note 84 at 9-55.

[130] *Id.* at 10-48.

[131] *Supra* note 126.

[132] This is also the current practice in the Philippines.

Delaware Corporation Law. In a recent case, the Delaware Supreme Court ruled that shareholder proposal rules related to by-laws cannot be excluded on the basis of Exchange Act Rule 14a-8(i)(8) with regard to the proposal of candidates for the director positions.[133]

E. The Rise of the Union-Affiliated Activists

In the United States, a growing class of union-affiliated groups and pension funds has emerged as shareholder activists who steadily utilize shareholder proposals.[134] Various labor groups deliberately seek out labor union-related issues.[135]The USSEC promoted this practice by allowing various groups to come together and discuss proxy strategies back in the early 1990s.[136]

Union groups such as the American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO"),[137] and the American Federation of State, County and Municipal Employees ("AFSCME")[138] have joined forces with the California Public Employees' Retirement System ("CalPers"),[139] a public pension fund activist. Several unions have come together to form Change To Win ("CtW") in order to organize activism and proxy challenges at selected corporations.[140]

F. Corporate Governance Proposals

Shareholder activism in corporate governance issues has risen in recent years since the passage of Sarbanes-Oxley in the U.S. It has further intensified in the wake of the recent financial crisis and market decline in 2008.[141]

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[133] American Federation of State, Country & Municipal Employees v. American International Group, Inc., 462 F.3d, 121(2nd Cir. 2006).

[134] *Supra* note 84, at 10-45.

[135] *Id.*

[136] *Id.*

[137] *Website available at* http://www.aflcio.org/ (last visited May 1, 2012).

[138] *Website available at* http://www.afscme.org/ (last visited May 1,2012).

[139] *Website available at* http://www.calpers.ca.gov/ (last visited May 1, 2012).

[140] *Supra* note 84, at 10-46.

[141] *Supra* note 84, at 9-44.

1. Elimination of Staggered Boards of Directors

One of the more frequently utilized corporate governance proposals pertains to the shift from plurality voting to majority voting of the boards of directors.[142] Two models of majority voting standards have emerged from this exercise: (1) the "Pfizer" and (2) "Intel" models.[143] The "Pfizer" model, a modified system of plurality voting, is when an incumbent director who does not receive a majority of the affirmative votes from the votes cast will have to resign. On the other hand, in the "Intel" model, the shareholders can vote "for" or "against" a director and if an incumbent nominee receives more "against" than "for" votes, he or she will have to resign from his or her position.[144]

2. Separating the Offices of Chairman of the Board and the Chief Executive Officer

The shareholder proposal rules allow shareholders to propose an increase in the number of independent directors and to separate the positions of the chief executive officer ("CEO") and the chairman of the board.[145] Proponents for the separation of the two offices argue that "having an independent chairman is a means to ensure that the CEO shall manage the company in close alignment with the interests of shareowners, and that the managing the board is a separate and time-intensive responsibility."[146]

3. Executive Compensation Proposals

Shareholder activists have increasingly proffered say-on-pay, golden parachute, and other executive compensation-related shareholder proposals.

Say-on-pay is a shareholder's way of expressing dissatisfaction with management performance through less offensive means by disapproving management compensation packages without having to remove incumbents or

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[142] *Id.* at 9-46.

[143] *Id.*

[144] *Id.*

[145] *Id.* at 9-47.

[146] Millstein Center for Corporate Governance and Performance, as quoted in *supra* note 84, at 9-47.

to elect new directors.[147] Under Exchange Act Rule 14a-20, a corporation is mandated to allow a separate shareholder vote to approve the compensation of executives where a solicitation that relates to an annual meeting of shareholders pertains to a Troubled Asset Relief Program ("TARP") recipient that still has some financial obligations remaining under TARP.[148]

Dodd-Frank requires that shareholders should approve golden parachute compensation proposals[149] that are presented during a merger, consolidation, or proposed sale, acquisition, or other disposition of all or substantially all of the assets of the corporation. The corporation should provide all the pertinent proxy or consent solicitation materials that outline any agreement or understanding with any officers concerning compensation that relate to the merger, consolidation, or proposed sale, acquisition, or other disposition of all or substantially all of the assets of the corporation.

In terms of executive stock awards, various shareholder proposals address other compensation practices such as bonus deferrals and stock award retention plans.[150] Other proposals include post-employment agreements and golden coffins. The New York Stock Exchange and the National Association of Securities Dealers have also approved some changes to rules related to executive compensation. For instance, all new equity-based compensation plans and any material amendments to existing ones must be approved by shareholders.[151]

The US SEC has enacted the final disclosure rules on executive compensation with succeeding amendments. These amendments require disclosure in a tabular format coupled with a comprehensive narrative disclosure about a corporation's compensation policies and practices. These disclosures should describe any risk factors that may cause any material adverse effects on the corporation.[152] Proxy and financial statements are now required to disclose the relationship of a company's compensation policies and practices to risk management; board leadership structure and the board's role in risk oversight; stock and option awards to company executives and directors; and

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[147] *Supra* note 84 at 9-49.

[148] *Website available at* http://www.federalreserve.gov/bankinforeg/tarpinfo.htm (last visited May 12, 2013).

[149] *Supra* note 84 at 9-51.

[150] *Id.*

[151] *Id.* at 9-53.

[152] *Id.*

potential conflicts of interest of compensation consultants and the fees paid to these consultants and their affiliates.[153]

4. Poison Pills

Shareholder proposal rules can allow shareholders to press corporations to abandon or repeal any poison pill provisions. Newer versions of poison pills have emerged due to the financial crisis though, such as the so-called "net operating loss" poison pill. A "net operating loss" poison pill provision triggers the curtailment of the carry-forward net operating loss benefit when more than 50% of the shares of a corporation that are held by 5% or more shareholders are transferred within a three-year period.[154]

V. RECOMMENDATIONS FOR A PHILIPPINE SHAREHOLDER PROPOSAL SYSTEM

The evolution of the current shareholder proposal milieu in the US is quite far too sophisticated for the current Philippine proxy access environment. As previously discussed, several factors hinder the effective implementation of shareholder proposals as a proxy communication access tool in the Philippines.

A. Shareholder Proposals and Philippine Ownership Structure

The ownership structure of the controlling elite in the Philippines does not encourage the development of large institutional investors. As discussed above, family-related shareholders hold dominant positions within major corporations and in turn, within intricate webs of closely-related family-owned holding companies. Family members, as dominant shareholders in family-owned corporations, cannot become shareholder activists themselves precisely because they practically own the corporation itself. It is not in the best interest of a rogue minority family-related shareholder to lobby against the current status quo. While family-owned corporations in the Philippines may also be

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153 *Id.*

154 *Id.* at 9-54.

public corporations, the general investing public remains a minority shareholder and hence has no incentive to make shareholder proposals.

B. Shareholder Proposals and Philippine Capital Markets

The capital markets environment in the Philippines also does not seem to make it conducive to enact a similar Exchange Act Rule 14a-8. According to available Philippine SEC data as of June 30, 2005, there are only 36 public companies registered with the Philippine SEC[155] and only 328 corporations that are listed with the PSE. Controlling shareholders, defined as the largest five shareholders, own up to 80% of the voting shares in seven out of the thirty companies that compose the PSEi.[156]

This goes back to the structure of family-related corporations in the Philippines. Not only is there not enough market capitalization in the Philippines. Those who control whatever levels of capital at present come from these wealthy families. The market capitalization in the Philippines is essentially driven by the elite class. Until such time that the ownership structure in the Philippines changes, these corporations will be held and dominated by these wealthy families.

C. Shareholder Proposals and Corporate Governance in the Philippines

A shareholder proposal is a shareholder's recommendation to a corporation's board of directors and management that they should include such proposal in the proxy materials for the consideration of the shareholders during the meeting.[157] This presupposes that such recommending shareholder is cognizant of some kind of issue or matter to present to the management and the board of directors as a result of their action or inaction.

However, a shareholder can only be fully apprised of corporate actions through the various disclosures filed by a corporation. Thus, a shareholder

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[155] List of Public Companies, *available at* http://www.sec.gov.ph/investorinfo/registeredentity/public%20companies%20as%20of%20123112.pdf (last visited May 1, 2012).

[156] *Supra* note 50.

[157] Exchange Act Rule 240.14a-8(a).

proposal system shall necessarily depend upon a fully transparent, quality, and accessible corporate disclosure system. If the corporate disclosure system lacks transparency, proficiency in quality, and accessibility to the public, shareholders will not be aware of corporate actions or inactions. Shareholders will be left in the dark as to whether corporate activity, or the lack thereof, is being conducted with their best interests in mind.

As previously discussed, the Philippine SEC does not have an electronic database where shareholders can easily access and retrieve disclosures filed by public or reporting corporations. In addition, there is a lack of coordination between the Philippine SEC and the PSE, notwithstanding the existence of the PSE's electronic system. Moreover, the quality of corporate disclosures in the Philippines cannot match the comprehensiveness of the requirements of the USSEC, both substantively and formally. Philippine disclosures are quite inadequate in terms of the quality of the disclosures, transparency, and accessibility. A shareholder proposal system in the Philippines may thus become a futile exercise in shareholder communications if shareholders themselves cannot access the very corporate information that will serve as the bases for their proposals.

In addition, some of the US corporate governance-related proposals in recent years may be inapplicable to the Philippine setting. For instance, the default voting system for directors in the Philippines is already on a majority basis.[158] In terms of separating the roles of the chairman of the board and the chief executive officer, the Revised Code of Corporate Governance of the Philippines already exhorts public corporations to separate the positions of the chairman of the board and the chief executive officer.[159] The corporation must ensure that there are sufficient mechanisms in place that will promote independent perspectives via an enforceable system of checks and balances in case one person holds both positions.

VI. THE CASE FOR POCKETS OF SHAREHOLDER ACTIVISM IN THE PHILIPPINES

Although several factors may hinder the development of a similar shareholder proposal system in the Philippines, the enactment of a similar

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[158] CORP. CODE, § 24.

[159] SEC Mem. Circ. No. 6 art. 3(C) (2009).

Exchange Act Rule 14a-8 in the Philippines may still be useful in creating "pockets" of shareholder activism. Despite the inadequacy of the quality of disclosures and their transparency and accessibility, the fact is that there is already a disclosure system in place. It is just that it needs some improvements to accommodate a similar Exchange Act Section 14 and Exchange Act Rule 14a-8 shareholder proposal regime.

A. Enhancements in the Disclosure System and Furthering Corporate Governance Discourse

In terms of say-on-pay and executive compensation shareholder proposal matters, the Amended Implementing Rules and Regulations of the Philippine SRC require that directors and officers must disclose their executive compensation scheme in the corporation's annual reports, information, and proxy statements.[160] This is likewise mandated by the Philippine Revised Code of Corporate Governance. Corporations must disclose all fixed and variable forms of compensation for their directors and top four management officers in the clearest and most concise manner possible.[161] The minimum disclosure requirements that listed corporations need to provide shareholders, such as annual reports discussing executive compensation, are accessible through the PSE. In addition, public corporations are mandated under Philippine SRC Rule 17.1 to provide copies of these same proxy materials to shareholders prior to holding shareholder meetings.

The Philippines has a nascent disclosure system in place that just needs some refinements in terms of transparency, quality of disclosures, access, and coordination among the regulators. The Philippine SEC envisions an automated system of disclosures in the near future. This will allow regulators to conduct better compliance oversight over the submission of disclosures. While automation would be more of a formal than a substantive improvement, this policy objective will still promote enhanced transparency and accessibility.

Enhanced transparency and accessibility will help expose potential corporate governance issues which would in turn help regulators craft better disclosure policies. Regulators should study and examine the Securities Act of 1933 and the Securities Exchange Act of 1934 to learn how to improve the

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[160] Item 10 of Form 17-A.*See also* Philippine SRC Rule 17.1(1)(A)(i)(ii).

[161] SEC Mem. Circ. No. 6, art. 3(J) (2009).

quality of Philippine disclosures. They should also keep abreast of major developments in corporate and securities laws, such as Dodd-Frank and its proposed regulations. While Dodd-Frank was a reaction to the United States financial crisis of 2008, it is a rich source of corporate and securities reforms that is worth examining.

In fact, the underdeveloped disclosure system in the Philippines might even still benefit from an Exchange Act Rule 14a-8 shareholder proposal system. Notwithstanding the lack of transparency, quality and accessibility of disclosures, shareholders will become empowered to inquire more about their corporations. They will have an avenue to suggest and recommend corporate actions directly. A shareholder proposal system is a direct access tool for corporate communications with the board of directors, management, and other shareholders. Minority shareholders in particular will be able to lobby their proposals on par with majority shareholders. What the disclosure system may lack in terms of transparency, quality and accessibility, the shareholders may make up for proactive participation in exploring and exposing possible corporate governance issues. This "pocket" of shareholder activism in the activities of the corporation will aid in the examination of existing corporate governance laws and rules.

B. Mandatory By-laws

A similar mandatory by-laws shareholder proposal in the Philippines may also help shareholders directly propose amendments to by-laws. Currently, Philippine shareholders may only adopt, amend, ratify, or repeal bylaws[162] proposed by the board of directors and management, but they cannot propose these amendments themselves. However, this may entail an amendment to the Philippine Corporation Code.

Nevertheless, a mandatory by-laws shareholder proposal will contribute to an examination of the Philippine Corporation Code. A shareholder proposal system will help uncover other similar Philippine Corporation Code provisions or other laws or regulations that impede better shareholder proxy access.

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[162] CORP. CODE, § 46.

C. Corporate Social Responsibility Issues

Finally, one shareholder proposal "pocket" involves those that pertain to CSR issues. While Philippine corporations have slowly adopted CSR programs, it should be noted that these CSR programs are board- and management-driven. There is a myriad of possible CSR issues that may still be directly proposed by the shareholders themselves if they had a shareholder proposal mechanism. A shareholder proposal system will empower shareholders to directly make proposals that they think their corporations should or should not adopt on the CSR issues. Because shareholders can directly access and communicate with the board of directors, management, and with one another, CSR discourse in the Philippines could be enhanced.

VI. CONCLUSION

It should be noted that the Philippines adheres to the Western concepts of transparency, fairness and accountability in corporate governance. As a direct access proxy tool, a shareholder proposal system empowers shareholders to participate directly and proactively in the corporate proxy access system. The shareholder proposal system "plugs in" and makes up for the deficiencies in the disclosure system by allowing shareholders direct and proactive participation in the business of their corporations. This, in turn, will ultimately promote the further development of corporate governance discourse in the Philippines.

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