Facilitating Shareholder Nominations to the Board of Directors

The control of a company is shared by its Board of Directors and its shareholders. The Board consists of managers of the company (inside directors) and other independent individuals (outside directors). The directors act as representatives of the stockholders and make decisions on major company issues including operational priorities, hiring and firing of executives, dividend policies, and executive compensation. Directors are elected generally by shareholders at the corporation’s annual general meeting. Shareholders who do not attend the annual meeting may vote (online or by phone or mail) for individual directors and various governance resolutions prior to annual meetings or by directing their broker to vote on their behalf. Over 6 billion shares are voted in the US each year, making the proxy system a key element of corporate governance.

Nominees for directorship are selected by the Board as a whole or by a nominating committee, typically with input from the company’s management. Although the Board is intended to be an independent decision making body, in certain cases, conflicts of interest have resulted in rubber stamp boards that reward top management handsomely despite poor results or ignore corporate governance changes approved by stockholders.

Traditionally, shareholders could only nominate Board members at the general meeting or by mailing out ballots separate from the proxy statements mailed out by the company. Thus shareholders wishing to nominate someone else to the Board had to run campaigns to win the support of other shareholders, which could cost millions in legal, printing and mailing costs. Activist investors, such as Carl Icahn, have fought to get their candidates elected to Boards of companies they said were underperforming, but the process was too expensive and time consuming for most shareholders.

In order to make Boards more accountable to shareholders and more vigilant in overseeing companies and their management, and thus enhance investor confidence, the US Securities and Exchange Commission (SEC) has implemented a “Facilitating Shareholder Director Nominations” rule. This rule simplifies proxy access and the exercise of shareholders’ rights to nominate and elect directors to company boards. The rule requires companies to provide shareholders information about, and the ability to elect, a shareholder’s (or a group of shareholders’) nominees to the board. Groups that own at least 3% of a company’s stock will be allowed to put their own nominees for the Board on the annual proxy ballot sent to all shareholders before director elections. In order to be eligible to nominate a director, shareholders will need to have held the minimum 3% level of stock for at least three years and they cannot have borrowed to meet this minimum level. In addition the nominating shareholders need to hold the minimum level of stock at least through the date of the election and cannot use the proxy access rule if they hold the shares for the purpose of changing control of the company. Finally, this rule allows them to nominate up to 25% of the Board membership.

The rule has been undergoing court review since its publication, and changes in its scope are likely. In preparation for its ultimate implementation, you have been tasked to propose, design and develop a prototype system that will implement the SEC’s proxy access rule for Wal-Mart, a large publicly traded company. Analysis of the system’s requirements requires consultation with various stakeholders, review
of the SEC materials, and data from Wal-Mart’s annual reports to its shareholders and other public
documents. The system should be capable of tracking director nominations from shareholders, verifying
the shareholding status of the nominators, designing the ballot forms and other appropriate reporting
tools.

Starting points for your analysis

**Shareholders and the Proxy Process:**

Kurosawa, A, (1963) “High and Low”, film. This acclaimed film identifies the role of corporate managers
and ethical decision making. Available on E-RES.

https://www.shareholdereducation.com/proxy_process.asp. A description of the proxy process from
the perspective of a vendor of software solutions.

**The Proxy Rule:**


Director Nominations” retrieved from http://404.gov/comments/s7-10-09/s71009.shtml, Comments
and concerns regarding the rule, collected during the public comment period.

and procedures.

**Wal-Mart**

Look for proxy materials for balloting and informational background.