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McDonald's Franchisees Seek Board Representation

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Franchise industry watchers are drawn once again to the "Golden Arches," as McDonald's heads toward its annual shareholder meeting later this month in Oak Brook, Illinois. There, up for vote, will be a proposed shareholder resolution, which, if passed, would assign a new class of preferred stock to the company's franchisees, enabling them to elect one person to the corporate board of directors without the consent of common shareholders. Each franchisee would receive one share of the preferred stock for each restaurant he or she owns. The shareholder that submitted the proposal is a single trust owning more than 5,000 shares in McDonald's.

McDonald's board of directors is not pleased with these developments. Having already sought but failed to obtain SEC intervention to block the proposal, the board continued to express stern opposition to it in its proxy statement recently filed with the SEC. In that statement, the board warns that allowing only the franchisees to elect a certain director, without opening the vote to all shareholders, would undermine the role of directors as fiduciaries charged with acting in the best interests of all shareholders. The board also credits itself for the fact that 11 out of its 12 current members are independent directors, and cautions against adding a director who would represent the limited interests of a single stakeholder group – the franchisees – at the expense of the shareholders at large. The board further notes that it maintains "robust lines of communication" with all of its stakeholders, whose input it receives on a consistent basis through various channels, including the corporation's global network of franchisees. In that way, the board suggests, the proposed resolution to allow the franchisees to elect their own director for the claimed purpose of representing their interests to the board is both "extreme and unnecessary."

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In rebuttal, the sponsor of the proposal points out that franchisees collectively operate 30,081 out of 36,525 McDonald's restaurants worldwide. That fact, according to the sponsor, makes franchisees critical to the corporation's long-term success as "the main revenue and profit drivers creating shareholder value." As such, the sponsor contends that franchisee board representation "could help strengthen the alignment" between corporate and its franchisees by providing "a voice for these critical stakeholders among McDonald's top policy leadership." The sponsor further notes that the preferred stock proposed in the resolution is not fashioned to provide dividends, liquidation preference, or any other financial benefit to the franchisees; nor would any franchisee's right to vote be contingent upon membership in any franchisee association or other organization.

Although several commentators find passage of this proposal unlikely, the upcoming vote and surrounding debate may have already captured the hearts and minds of those who believe that corporate board representation should extend beyond shareholders to include key customers, suppliers, and other stakeholder constituencies. Both the anticipated and the unforeseeable implications of such an extension have investors and board rooms nationwide following this proposal with interest as it nears the vote this May 24th. Stay tuned!

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