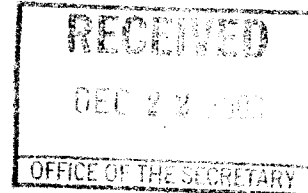


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December 18, 2003

Mr. Jonathan Katz  
U.S. Securities and Exchange Commission  
450 Fifth Street N.W.  
Washington, DC 20549-0609



RE: File Number S7-19-03.

Dear Mr. Katz:

On October 14, 2003, the Securities and Exchange Commission (the "SEC") published for comment Proposed Rule: Security Holder Director Nominations, which would require corporations to include in their proxy materials shareholder nominees for election as directors under certain circumstances (the "Proposed Rules"). We appreciate this opportunity to provide comments to the SEC with respect to the Proposed Rules.

We support the Sarbanes-Oxley Act of 2002 (the "Act") and appreciate the SEC's efforts to implement the Act. In addition, we support the New York Stock Exchange and NASDAQ corporate governance listing standards, designed to address the issues of board composition and director performance. We believe the rules promulgated by the SEC under the Act and the corporate governance standards of the securities markets created a new framework that balances the various legitimate interests of corporations and shareholder constituencies and will encourage more transparent business practices. We also agree with Congress, the SEC and the securities markets that corporate boards and management must hold themselves to the highest standards of corporate governance.

The new Sarbanes-Oxley standards as well as the New York Stock Exchange and NASDAQ governance standards require corporations and their boards to implement appropriate governance practices. Because of the scope of the Proposed Rules, we believe the Proposed Rules will impact many public companies regardless of their corporate governance practices or their responsiveness to their respective shareholders and go far beyond the worthy goal of targeting a small number of unresponsive companies. The SEC should allow the corporate governance reforms adopted by Congress, the SEC and the securities markets to be fully implemented before proceeding with more regulation. Additional time is required for the new corporate governance reforms to be fully implemented by corporations and to study the impact of those reforms and other governance standards mandated by the Act already implemented or in the process of being implemented in order to determine whether the requirements of the Proposed Rules are necessary or advisable.

The board of directors has the fiduciary duty under state law to act in the best interest of the corporation and all its shareholders. One of the responsibilities of a board of directors under state law is to nominate director candidates. When carrying out this responsibility, the board is required to act in the best interest of all of the shareholders of the corporation. Nominations by shareholders will not be subject to this fiduciary duty.

With the increased independence of boards of directors, the strengthened role and independence of nominating committees, the increased disclosure requirements regarding the nomination process, and the enhancement of shareholder-director communications, we believe that the issues that led to calls for shareholder access will be adequately addressed. In considering director candidates, the board of directors or the nominating committee of the board of directors must consider many factors. These factors include the need to have at least a majority of independent board members, the need to insure that the board of directors has at least one independent financial expert who is qualified to serve on the audit committee, the need to have sufficient international expertise on the board if the corporation has international issues, and the need to have board members with a variety of strengths and expertise that will result in a well-rounded board of qualified individuals who will act in the best interest of the corporation and its shareholders as a whole. While boards may consider shareholder nominees, the board should have the ultimate responsibility for the nominees included in a corporation's proxy materials.

Direct shareholder access to corporation proxy statements would undercut the role of the board of directors and its nominating committee in the important process of nominating director candidates. In contrast to the duties imposed on directors, shareholders of a large public corporation are allowed to act purely in their self-interests. Shareholders have no fiduciary duties to the corporation or other shareholders. They may nominate director candidates for any number of purposes, regardless of whether those purposes are self-interested or promote other agendas. The new rules will enhance the access of special interest groups, such as unions and state pension funds, to advance their own interests and agendas rather than those of all shareholders. Moreover, in bypassing the nominating committee, which must be composed solely of independent directors under the New York Stock Exchange listing standards, the Proposed Rules would diminish board accountability to shareholders.

The Proposed Rules could lead to corporations facing compliance issues under some of the new governance standards. For example, if a shareholder nominated candidate is elected in lieu of the board's nominee who qualified as an audit committee financial expert, the audit committee would be deprived of that expert's services. In these situations because directors cannot avoid their obligation to propose nominees who will form a board that is in the best interest of the corporation and its shareholders as a whole, the Proposed Rules have the potential to turn many director elections into divisive proxy contests. The contentious and public nature of such proxy contests could

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substantially disrupt corporate affairs, result in significant costs to the corporation, and dissuade from board service well-qualified individuals who do not want to stand for election in a contested situation.

If the SEC nevertheless concludes the inclusion of shareholder nominees in corporation proxy materials should be required, we agree with the SEC that it should only be triggered by objective criteria indicating that shareholders have not had adequate access to an effective proxy process. We are concerned, however, that the Proposed Rules run counter to this goal in several aspects. In particular, the trigger based on a majority-vote shareholder proposal to activate access would apply to any corporation, not just those who have failed to respond to shareholder concerns. Moreover, the trigger based on a director's receipt of more than 35 percent of "withhold" votes, while more appropriate than the first trigger, would not give the board of directors and its nominating committee an opportunity to respond to shareholder concerns about a director before the corporation's proxy process is deemed ineffective. This second trigger also raises concerns about fairness and balance. A dissident shareholder may publicly criticize one of the board's nominees during a withhold authority campaign without any regulatory limits while any response from the board would be subject to the disclosure and filing requirements of the proxy rules. Finally, the proposed thresholds for shareholders to submit a proposal to activate access and to nominate directors are too low to justify the cost and substantial disruption that the resulting proxy contests would cause.

If you have questions regarding our comments, please call Morton A. Pierce at 212-259-6640 or Steven P. Lund at 212-259-6630.

Very truly yours,



Dewey Ballantine LLP