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Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, D.C. 20549-0609

Re: SEC File No. S7-19-03 (Shareholder Director Nominations)

Dear Mr. Katz:

I am an accounting undergraduate at the W.P. Carey School of Business at Arizona State University in Tempe, Arizona. I appreciate this opportunity to comment on the Securities and Exchange Commission (SEC) proposal to require companies to include Shareholder Director Nominations in company proxy materials. I support the request to adopt the proposed new rules under Section 14(a)(8) of the Securities and Exchange Act of 1934 to include shareholder nominated director candidacies in the company's proxy statement and on the proxy card. Please consider my comments below with respect to Shareholder Director Nominations (SEC File No. S7-19-03).

Beginning with Enron's spectacular collapse, the troubles of American corporations have generated a steady stream of disturbing news regarding the problems at WorldCom, Global Crossing, Adelphia, Tyco, and a number of other American companies – and resulted in an estimated loss of more than $7 trillion in market capital. These disturbing cases have also served to expose the stunning and systematic failure of corporate directors to protect the interests of shareholders.[1] As the reverberations resulting from the recent probes into the pervasive bid-rigging practices in the insurance-industry now spread beyond insurers, the failures of corporate governance continues to cast a pall over the financial markets[2]. As an ex-WorldCom employee, as well as a shareholder of several publicly traded stocks and mutual funds, my family and I have experienced these failures in a very real and personal sense.

Sound corporate governance is the key to restoring investor confidence in our markets – and investor confidence is the key to long term economic prosperity. I support the Sarbanes-Oxley Act of 2002 and I appreciate the SEC's efforts to clarify and implement the Act. Clearly, this is no simple task. As I read through portions of the 66-page Act I felt a deep sense of appreciation for the irony of Section 409 (1), which asks companies to immediately report changes in their financial conditions "in plain English".[3] Nevertheless, I believe the Act represents meaningful progress toward restoring management accountability, shareholder responsiveness, and sound corporate governance.

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[1] Donaldson, William H. "Corporate Governance: What Has Happened and Where We Need to Go." Business Economics. 01 July 2003.

[2] McDonald, Ian and Langley, Monica. "Marsh Probe on Bids Triggers Dismissals of Four Executives." The Wall Street Journal. 04 November 2004.

[3] Proposed Rule S7-19-03, pg. 5

Although the recent reforms, including Sarbanes-Oxley, requiring additional disclosure, accountability, and harsher penalties are long overdue – they do not go far enough. Simply asking corporate management and directors to voluntarily abandon entrenched patterns of elitism, self-dealing, and conflicts of interests – made evident by unparalleled executive compensation – avoids the nature of the modern corporation's flawed institutional character.

Law makers and regulators commonly refer to the "independent" board of directors, which is assumed to hold and exercise the power granted to it by the owners of the corporation, namely the shareholders. However, as observed by Harvard University Professor Myles Mace in Directors: Myth and Reality, the independence of the board is a myth.[4] The reality is that the board's power is largely derived from the Chief Executive Officer (CEO). Board vacancies are filled based on the recommendations of the Chairman of the Board. However, in the vast majority of American companies the CEO *is* the Chairman of the Board. Thus, the CEO often selects the directors. The practically complete concentration of corporate power in the hands of the CEO is the most salient and troubling characteristic of governance in Corporate America today.

The very fact that directors are characterized as "representing" or being "elected by" shareholders, when shareholders played no role in their nomination or election, is clear evidence of the central challenge to corporate accountability. Shareholder advocate Nell Minnow, of The Corporate Library, described the current election process as follows: "Management nominates the candidates, no one runs against them, and management counts the votes."[5]

Allowing the names of independent candidates to appear on the company's proxy – regardless of the company's current governance practices or responsiveness to shareholders – is a critical next step in restoring both the integrity of the system and investor confidence. These goals are sufficiently elevated to be well worth the cost and effort that will be required to achieve them.

It is the duty of each director to supervise the activities of the company's management team. However, if a director owes his or her position to the CEO/Chairman, how likely is it that a director will ask management tough questions? If a director is incompetent, how likely is it that he or she will even be able to formulate the questions that should be asked? It is far more believable that directors who demonstrate a tendency for confronting management regarding important decisions will not find their names on the next proxy. Clearly, directors serve at the whims of management and their fellow directors – perpetuating a glaring conflict of interest for many if not most directors.

Nevertheless, directors still owe the company's shareholders a fiduciary duty to monitor management activities. However, there is strong evidence demonstrating that it is virtually impossible for shareholders to remove or replace directors who are incompetent or corrupt. If a director cannot be held accountable by shareholders who will ensure that a director consistently acts from genuine concerned for shareholder interests?

In fact, current SEC Rules do provide a means for shareholders to initiate a proxy contest or "fight" to replace a director. However, experience demonstrates that it is virtually impossible and financially

[4] Mace, Myles L. Directors: Reality and Myth (Harvard Business School Classics, No 4). Boston: Harvard Business School Press, 1971.

[5] "Shareholder Democracy Limps Ahead." Business Ethics. 18.2 (2004).

impractical to succeed in such an undertaking. [6]

For example, consider the well-known story of shareholder activist, Robert A. G. Monks' independent candidacy for a seat on the board of Sears, Roebuck, and Company. In May 1991, Mr. Monks initiated a proxy contest for a single seat on the Sears board of directors. Sears' management responded by allocating an additional $5.5 million to the proxy battle, retained takeover attorneys, and assigned 30 employees to solicit proxies to defeat Mr. Monks' candidacy. $5.5 million was a remarkable sum of money in light of the fact that Sears' 1990 net earnings from US retail operations were only $37 million.[7]

Other means of achieving director accountability have proven equally ineffective. The threat of litigation, through shareholder class-action lawsuits, is overrated as a deterrent to corporate malfeasance – serving only to further waste corporate assets and deface a corporation's valuable public image. Even when shareholders win a class-action against a company that they technically own, they have in a very real sense already lost; essentially paying themselves and related legal fees and expenses from the corporate treasury or tapping an insurance policy.[8] Given the best possible outcome is a losing proposition; many shareholders opt to accept *de facto* disenfranchisement.

In his petition on behalf of shareholder director nominations, James McRitchie, editor of Corporate Governance, asserted: "The myth is that the Management reports to the Board. The reality is that the Board reports to the CEO. Strengthening the definition of "independent" Directors will have little impact, as long as they owe their positions to the CEO."[9] Apparently, William Donaldson, chairman of the Securities and Exchange Commission, shares Mr. McRitchie's sentiments. Mr. Donaldson was recently quoted in the International Herald Tribune comparing the current system of electing corporate directors "to elections in the Soviet Union saying 'It's not really an election at all.'"[10]

By appropriating the term "election" corporations have manufactured an image of a participative democratic process that is completely at odds with reality. The only names that are required to appear on the proxy are the names of those individuals nominated by management. Without access to the ballot, there is no effective way for shareholders to hold incumbent board member accountable for their decisions. Without access shareholder access to the ballot, there is little motivation for a board to question ineffective, incompetent, or even self-serving management decisions.

Enron, Tyco, Adelphia, and WorldCom demonstrated that the current form of "oversight" is inadequate. "Independent directors" has long been the panacea of reform. However, the term "independence" like the term "election" has been subverted to support the autocratic hierarchies of the *status quo*. In an email to Business Ethics, Ms. Minnow wrote, "...there really can be no meaningful independence as long as the nomination process is a self-perpetuating closed loop."

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[6] "Commission on Public Trust and Private Enterprise: Findings and Recommendations." The Conference Board. 09 January 2003.

[7] Rosenburg, Hilary. A Traitor to His Class: Robert A.G. Monks and the Battle to Change Corporate America. New York: John Wiley & Sons Inc. January 1999.

[8] O'Brien, Timothy L. "Behind the Breakup of the Kings of Tort." New York Times. 11 July 2004.

[9] McRitchie, James. "Request for Rulemaking to Amend Rule 14a-8(i) to Allow Shareholder Proposals to Elect Directors." U.S. Securities and Exchange Commission. 01 August 2002. <http://www.sec.gov/rules/petitions/petn4-461.htm>.

[10] Floyd, Norris. "Who Cares if the Bosses are Angry?" International Herald Tribune. 07 May 2004.

- The solution is simple: Shareholders should be allowed to nominate and place candidates on the proxy.

A fair and democratic proxy solicitation process is vital to director accountability. I respectfully request that the SEC adopt the proposed new rules under Section 14(a) (8) to require that all nominees for director positions be included in corporate proxy materials.

Thank you for your time and consideration.

Respectfully,

Eva K. Kuo

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