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OFFICE OF THE SECRETARY

Jonathan G. Katz, Secretary
U. S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549 -0609

Re: S7-19-03 - Comment on Stockholder Access Proposal

Dear Sir:

My perspective is that of nearly 30 years in a corporate/securities practice with a major regional law firm, including four years teaching a course in securities law as an adjunct professor at Emory Law School and a practice focus on corporate governance. Additionally, I have had another seven years as the current General Counsel of a NYSE listed company.

My bias with regard to this matter is simply to favor sound corporate governance that supports a strong capital market system that is sustainable over the long-term. In today's environment the features of corporate governance that are essential to be supportive of that capital market system must include, among other things, informed oversight by independent boards of directors that are qualified to serve, committed to spend the time to perform their duties and resolute about their companies acting in an ethical manner.

Please consider the following points:

1. The pre-Enron system of nominating and electing directors resulted in many instances in a system of selection and perpetuation of directors who frequently did not have the capacity to be responsive to the needs of the company on whose board they served, or, if they possessed the capacity, did not have the commitment to perform in the manner required in order to be an informed, independent director. Unfortunately, CEO's in many instances did not seek to alter a board demeanor that was compatible with their own sense of position even if this resulted in a board that was not as effective a participant in the governance process as it should have been. This picture was, unfortunately, too commonplace among public companies in this country.

2. Our system of corporate governance relies heavily on the proposition that the board of directors performs an important role in the decision-making process and oversight of the

business, control of assets, and legal compliance of corporate activities. In turn, corporations play a critical role in our capital market system, which is without question the strongest and most dynamic in the world.

3. Enron and its rotten progeny, particularly WorldCom, exposed the excesses of a financial bubble in which virtually every component of the corporate control system, both internal and external, had become remiss and lax in varying degrees and for various reasons, most frequently involving money. They were not performing the "gatekeeper" functions in the manner which the system contemplated; and, without the restraint of active gatekeepers throughout the system, greed, arrogance and fraud were able to creep into the culture and actions of CEO's and executive management of more than a few public companies.

4. The wake-up call following Enron was pervasive, and, however painful, probably necessary to get the course correction needed for corporate conduct and the oversight of the various gatekeepers. There was undoubtedly an overreaction in some areas, and its cumulative effect has considerable cost and some requirements that do not contribute to the desired result. Given the rushed nature of the legislative background and action on Sarbanes-Oxley, unfortunate leadership issues at the SEC and the delay in getting the NYSE and NASDAQ more or less harmonized, the uneven merit and effect of reform should not be surprising. Nevertheless, significant reform is proceeding; and most acknowledge its beneficial impact while conceding that the pendulum has swung too far in some respects. But the point to consider now is that the entire public company governance system and its various constituencies are going through considerable change in order to achieve a level of performance and disclosure that is an expected norm, while eliminating some of the practices which had led to the laxity and opportunity for fraud which had infiltrated some companies.

5. The cumulative impact of the changes in progress must have some time in order to have the impact intended. We must recognize that the accompanying cost and disruption is probably necessary but should not be exacerbated by further change, particularly controversial proposals whose beneficial effect is seriously questioned, unless the change is absolutely essential to correct a specific practice or achieve a result not otherwise attainable by current reforms that will have an evolutionary impact over time.

6. As to improving the independence and quality of boards of directors so that they act in a truly informed manner and unencumbered by the distractions of affiliations and relationships that should be irrelevant to the focus of their decision making and oversight, please consider the probable impact of (i) independent nominating committees; (ii) curtailment on the influence of management on selection of those with material relationships that may hamper independent judgment; (iii) recognition that board service is requiring considerably more time to reach the level of being "informed" that is necessary; (iv) the changing nature of board information, agenda content, meeting arrangements, and executive sessions; and (v) a heightened sense of awareness of the experience and qualities needed on boards of companies in different industries when new

candidates are considered and existing members are evaluated before nominating them for another term. If within a relatively short period of time the desired effect of the current changes is not clearly evidenced by studies and surveys, observation, commentary, court decisions involving director conduct, etc., then another and more rigorous round of changes is in order – but not until then.

7. Juxtaposed to the existing reforms relating to the nominating process and as a more logical extension of them, I would strongly suggest that consideration be given to the tried and true method of combining proxy disclosure and NYSE listing standards to require boards to develop and disclose (in greater detail than currently required) the nature of their director performance evaluation procedures, both on the board as a whole and on board members individually. This development would hasten the change of bringing onto boards new, more qualified directors sensitive to more active oversight by creating pressures that will cause some existing directors to step aside. Some will quietly decide that the new regime of director requirements is simply not what they are interested in and will not stand for reelection. Others may be interested but will not want to face the scrutiny or disclosure of a more rigorous performance evaluation, particularly one that evaluates their qualifications against the needs of the company for experienced, qualified board members. Personal relationships make effective and meaningful performance evaluations within boards by other board members a very difficult process unless they are forced and disclosed by regulatory requirements. We should not wait for these directors to reach retirement age in order for them to leave boards and free up board seats for a new regime of directors qualified for the assignment, aware of the commitment of time, and sensitive to the independence of judgment required. It is understood that boards' compensation would be increased in many instances to reflect the additional level of service involved.

8. My remaining observation relates to a very strong concern about the perception of the "stockholder" as the "owner" and therefore the constituency that should be given access to the proposed election process as a logical extension of stockholder democracy or as a means of gaining the objectives relating to the board reform being sought. My conclusion is that the Commission's proposal will have little beneficial effect on active board oversight and will unfortunately directly contribute to the short-term focus that the market already imposes on the direction of management and board decisions. It will also be disruptive to the process that is developing as a part of the reforms described above. The overall result will be counterproductive, and it will be very difficult to undo once unleashed, even when it becomes clear that it was a mistake.

   How do I reach this conclusion? Being a stockholder, even a controlling stockholder, surely does not carry with it responsibility or accountability that is needed for what is proposed. Just consider the reality of who the stockholders are at any point in time in today's market, for how long are they stockholders, and with what motives are they in and out of the stock. It defies reason to consider that this diverse array of transient owners given more power in electing directors they favor would bring other than

> disruption to trying to manage a long-term business strategy. Arbitrageurs, momentum purchasers, investment managers with varying return objectives, and others who focus primarily on short-term gain rather than maximizing value over a period of time are not generally associated with the motivation to propose candidates who would do other than promote similar short-term gain and objectives. Will that not be destructive to the role our corporations play in our capital system? Rather than focus on these transient owners as a critical part of this aspect of governance and provide them tools to further effectuate their goals, is it not better to view the objective for board performance being a corporation that conducts its business operations in a profitable manner over an extended term for the benefit of those that provide risk capital and also for the other constituents that make it a viable enterprise (and sustain the remainder of our economy in the process)? And is that result not more likely to come from continuing to increase the pressure on existing board members through disclosure and listing standards to examine the needs of the company for the types of experience and qualifications that will benefit board oversight and to seek candidates who are committed to being informed and acting without inappropriate influence?

In summary, I would ask that the Commission give the current reforms time (but not much) to produce results, and that the Commission reconsider whether the stockholders who are most likely to qualify for access to the election process you propose are the correct focus for additional power or rights in nominating and electing directors. Many of those who qualify for the access proposed and who will take advantage of it better fit the profile of those who have very short-term horizons to seek gains. Directors nominated by such stockholders are likely to reflect similar positions and short-term goals are in many instances adverse to the ongoing operations of successful corporations that maximize value over a longer period of time than the next quarter.

I appreciate your consideration of this comment.

Sincerely,

Dean Copeland

F. Dean Copeland