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March 30, 2004

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

Re: Security Holder Director Nominations
File No. S7-19-03; 68 FR 60784 (October 23, 2003)

Dear Mr. Katz:

America's Community Bankers ("ACB")[1] is pleased to file these additional comments on the proposed rule issued by the Securities and Exchange Commission ("SEC") that would require companies to include in their proxy materials shareholder nominees for election as director.[2] ACB previously filed a comment letter on the proposal on December 18, 2003. We are taking the opportunity to file additional comments in response to the March 10th roundtable. I attended the all-day roundtable and want to highly commend the SEC and its staff for organizing such an interesting and thought-provoking day of legal and policy debate. Panelists on all sides of the critical issues made many good points and ACB supports the SEC's efforts in trying to find an appropriate balance among the competing interests.

ACB Position

For all of the reasons mentioned in our previous comment letter, we continue to believe that now is not the right time for adoption of this rule. Instead, the SEC should monitor the impact of the new corporate governance-related rules issued by the SEC and the stock exchanges over the past two years and see whether the ability of shareholders to participate in the director nomination process has improved. These rules and passage of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley")[3] have helped achieve a better appreciation for the needs and interests of investors and should be given time to work before implementation of a rule whose benefits are far from clear.

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[1] ACB represents the nation's community banks. ACB members, whose aggregate assets total more than $1 trillion, pursue progressive, entrepreneurial and service-oriented strategies in providing financial services to benefit their customers and communities.
[2] 68 Fed. Reg. 60784 (Oct. 23, 2003).
[3] Pub. L. 107-204 (2002).

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If the SEC feels it is necessary to give some shareholders access to a company's proxy, we continue to support the suggestion that the proposal be applied only to "accelerated filers." Several roundtable participants supported this view as well and most of the day's discussion focused on the inability of shareholders at larger companies to meaningfully participate in the director nomination process.

Smaller companies, like community banks, tend to have more frequent and open dialogue with shareholders and are more responsive to their concerns. Many of a community bank's long-term shareholders and directors reside in the community, know each other and communicate frequently. Community banks also have a large percentage of institutional investors. Because these investors provide needed capital to the banks, the banks tend to be more responsive to them than larger companies with wider investor interest and easier access to the capital markets.

We believe that the proposal could have a disproportionate effect on our community bank members. The SEC provided details on the number of companies that have one or two shareholders that could meet the proposed thresholds for initiating shareholder votes and for nominating director candidates.[4] While we do not have specific evidence at hand, we do believe that community banks are more likely than larger companies to have shareholders that meet those thresholds because of the representation of institutional investors among community bank shareholders and the smaller trading market for community bank stock. Some community bank shareholders only have short-term interests in the bank and stake out a position with the purpose of forcing a sale. This is particularly a concern for community banks that convert from mutual to stock form or that are considering conversion.

Professional depositors in mutual institutions and those depositors that become shareholders in recently converted mutuals frequently care only about reaping a return on their investment through the sale or merger of the bank after conversion.[5] This proposal could allow short-term investors to get representation on the board to force their narrow interests. While the proposal would require that shareholders own their shares for a period of time and intend to continue to own them through the annual meeting where directors are elected, this will not solve the problem. Professional investors in recently converted mutual institutions are willing to wait several years while they continue to put pressure on management and the board to sell. As explained in our previous letter, the Office of Thrift Supervision ("OTS") has taken steps to discourage this behavior and the OTS efforts should not be thwarted by application of this rule to smaller companies.

This point raises the question of whether shareholder access to the company's proxy is wise in a regulated field such as banking. Banking laws and regulations have their own standards of eligibility for directors of depository institutions and their holding companies, and some institutions must file an application or notice with a banking agency before adding a director to

[4] 68 Fed. Reg. at 60790-91, 60794.
[5] See Eccles and O'Keefe, Understanding the Experience of Converted New England Savings Banks, FDIC Banking Review, Winter 1995, at 11 (available at http://www.fdic.gov/bank/analytical/banking/1995win/1_v8n1.pdf).

the board.[6] Furthermore, individuals that are considered for election as directors of regulated financial institutions need to possess certain expertise and skills that are unique to the business of banking and must understand the significant responsibility imposed on directors in a regulated industry.

As requested in our previous letter, we would appreciate clarification of how the rule would work in cases where banking law or regulation or a banking agency order or directive requires that a depository institution or its holding company get agency approval or file a notice before adding or replacing a member of the board. Also, clarification would be needed on how to handle a situation where the agency denied the request to add the particular director. We assume that in these situations, the shareholder director, if elected, would not be placed on the board until all regulatory requirements are met and that if a banking agency disapproved the service by the shareholder nominee, the nominee would never be placed on the board.

ACB appreciates the additional opportunity to comment on this important matter. Again, we commend the SEC and staff for taking the time to solicit a number of views on these issues before making final decisions on the proposal. If you have any questions, please contact the undersigned at (202) 857-3144 or via e-mail at dkoonjy@acbankers.org.

Sincerely,

Diane A. Koonjy
Senior Regulatory Counsel

[6] See, e.g., 12 U.S.C. §§ 72, 375b, 1831i, and 3201; 12 C.F.R. §§ 5.51, 7.2005, 225.72, 303.102, 563.33, and 563.560. State banking laws and regulations also may contain standards and conditions. Prior approval for service as a board member also may be mandated by an order or directive from a banking agency.