

1           Mr. PICKENS: -- but if there was ever a person  
2 that's qualified as an entrepreneur founder for wanting to  
3 maintain voting control of a company, I qualify for that.  
4 I'm, I founded this company and I never did even consider  
5 trying to maintain voting control.

6           My feeling was is that if the Company went public,  
7 I now had stockholders partners and I had to perform for them,  
8 and if I didn't, that somebody else that wanted to do the  
9 job, and was willing to pay to do the job, and take me out  
10 of the position, I always felt like that was a risk that I  
11 had to consider, and consequently it kept me accountable  
12 to the stockholders.

13           So, I, you know, I'm not for tenuring corporate  
14 CEOs in there, and when I heard the Figgie exchange here  
15 a minute ago, I mean, there's no other answer to the reason  
16 why Figgie was set up that way. It was so that management  
17 could keep control. That's exactly what they were after.  
18 And talking about some long range plan of theirs as far  
19 as I'm concerned is bunk. I mean, other people can take over  
20 companies and run them and give long range plans and whatever  
21 else.

22           I mean, there are other managers for Mesa Petroleum  
23 than Boone Pickens. And there are probably some that are  
24 better than I am. And if anybody ever wants to make an  
25 offer for Mesa Petroleum, I can tell you this: there'll be

1 no golden parachutes; there'll be no staggered board; there'll  
2 be nothing else. They can have it if the stockholders want  
3 to sell it. It'll be that simple.

4 COMMISSIONER PETERS: I think I'll put you in the  
5 no exceptions to the one share, one vote.

6 MR. PICKENS: No exceptions.

7 MR. SOMMER: Well, may I volunteer one statement  
8 to complete the dialog that Commissioner Grundfest and I  
9 had. The present ownership of the Figgie family is approxi-  
10 mately the same percentage it was at the time this was  
11 put into effect. Nothing has been done so far to use the  
12 lower voting stock to effectuate a greater degree of ownership  
13 on their part.

14 COMMISSIONER PETERS: Thank you.

15 Thank you, Mr. Chairman.

16 CHAIRMAN SHAD: Thank you, Commissioner Peters.  
17 Commissioner Cox?

18 COMMISSIONER COX: I would like to direct my  
19 question to both Mr. Pickens and Mr. Sommer.

20 Yesterday, we heard from a number of interesting  
21 parties, but from the spokesmen for shareholder interest  
22 groups, the only one in favor of ratifying the New York  
23 Stock Exchange's proposal argued that to do so would prevent  
24 hostile takeovers and she thought that they were damaging.

25 When we had the institutional investor in the

1 previous panel, quite often the subject of a defense against  
2 takeovers came up and how allowing disparate voting rights  
3 would provide a defense for companies.

4 Now, with this panel, the subject of takeovers  
5 or at least of breaking up companies and so on, has been  
6 raised by several of the people here. So I would like to  
7 ask that aside from some of the issues that this proposal  
8 raises, such as competition between exchanges, such as  
9 the general notion of accountability of management, does  
10 this really get down to a product of takeovers, of hostile  
11 takeovers for companies.

12 Because, obviously something had to motivate the  
13 issue that the companies on the New York Stock Exchange  
14 that desired this to be considered, the fact that there  
15 was a subcommittee which Mr. Sommer participated in that  
16 came up with the original plan that was submitted to the  
17 Board at the Exchange, and the comments that have come about  
18 so far. Does it really get down to an issue of takeovers,  
19 aside from Commission authority and state law versus Federal  
20 law and so forth?

21 And I would like to pose that to both Mr. Pickens  
22 and Mr. Sommer.

23 MR. SOMMER: Whose first, Boone, you or me?

24 MR. PICKENS: Whatever, Al.

25 MR. SOMMER: Okay, I'll take the first shot at it.

1           Yes, you're perfectly right, Commissioner Cox.  
2 Underlying all this is the question of the ability of  
3 management to defend the company against a hostile takeover.  
4 It has become particularly important because as time has  
5 gone on, we have seen one opportunity or one means after  
6 another that has been adopted, come to naught. Despite  
7 the fact that there's a great deal of talk about entrenched  
8 management being in favor of this disparate voting, the  
9 fact of the matter is more often, the management we're talking  
10 about is a management that has great concern over many  
11 considerations that bear upon the corporation.

12           They have concern with its traditions, its plans,  
13 its employees, the communities that they are located in,  
14 it has concern with the ability to maintain the integrity  
15 of the company, not having to assume large amounts of debt,  
16 not having to lop off acquisitions that are a part of a  
17 long term plan. Those are the concerns that have characterized  
18 many of the managements, in fact, I would say the overwhelming  
19 majority of the managements that have adopted measures to  
20 thwart or to delay or to prevent hostile takeovers.

21           There is no question that many of the companies,  
22 perhaps most of them, that have opted for two shares of  
23 common stock in recent years, have done so for that purpose.  
24 That is not the only reason, and General Motors, of course,  
25 is a preeminent example of a company that went that route

1 for a different reason.

2 But there is involved in this a matter of great  
3 concern, and that was one of the underlying forces that  
4 obviously resulted in a concern that the New York Stock  
5 Exchange had, that because of the desire and the wish of  
6 managements to secure the companies against hostile takeovers  
7 they might go to two classes of common stock, even at the  
8 cost of leaving the New York Stock Exchange.

9 COMMISSIONER COX: Mr. Pickens?

10 MR. PICKENS: I'm interested in the comment that  
11 Mr. Sommer made about defend the company. I think what  
12 we're saying is defend the management of the company.

13 What we're the concerns that management has that  
14 I have seen is, one on their list is their salary; two, their  
15 bonus; three, their perks; and four, their power.

16 After that, well then the company's interest starts  
17 to unfold.

18 MR. SOMMER: You're associating with the wrong people.

19 (Laughter)

20 MR. PICKENS: When I hear the word, hostile, hostile  
21 let's identify what that is. I mean, hostile is only in the  
22 mind of the target company chairman. Certainly not in the  
23 minds of the stockholders. The stockholders have, they  
24 consider offers to be downright friendly. And why did anybody  
25 ever buy a share of stock in the first place? They bought it

1 to make money is the reason why.

2 Now, I'm glad we've opened up the subject of  
3 General Motors. Roger Smith is a very powerful man. He  
4 has really caused I think this whole meeting to take place.  
5 He is the one that put the pressure on the New York Stock  
6 Exchange to have dual classes of common stock. But also  
7 another very, I think, interesting point is that Roger Smith  
8 is making a salary and a bonus of over \$5 million a year,  
9 doesn't own much stock in General Motors.

10 Only 31,000 shares. It's I think it's unusual  
11 that our system allows a person making \$5 million a year  
12 that's a little uncomfortable because the director has  
13 something to say about what's going on at General Motors,  
14 but more than that, that Roger Smith, with 31,000 shares  
15 of stock, has just fired a director that has 12 million  
16 shares of stock.

17 I don't know how it strikes you but it seems unusual  
18 from my position.

19 (Laughter)

20 I also find companies like Smuckers -- that's  
21 an unusual name, must be a family name, but nobody could think  
22 that up for a name of a company, but they have rights where  
23 you become a stockholder and then after 48 months, four years,  
24 that you become a full fledged stockholder. I mean, you work  
25 your way in. It's kind of like, you know, that you bought

1 a car but it'd be six months later, if you don't have any  
 2 dents on it, well, you know, you're a full fledged owner  
 3 and they'll put the rest of the equipment on it, or something  
 4 else; that you've convinced them that you can drive that  
 5 car all right.

6 Your an owner. An owner is an owner, whether you  
 7 bought it 15 minutes ago, or you inherited it 25 years ago.  
 8 You are an owner when you buy a share of stock, So I don't  
 9 see that you ever work your way in.

10 I'd like to touch just if I could on this one; that  
 11 independent directors are a laugh. Don't ever leave anything  
 12 up to independent directors because I can tell you exactly  
 13 how they got there. They got there because the chairman  
 14 picked them. They're either old fraternity brothers or  
 15 they belong to the same club, or they're just nice guys or  
 16 nice women or whatever else that would go along with the  
 17 chairman.

18 So don't, please don't leave anything up to indee  
 19 pendent directors to decide whether somethings hostile or not  
 20 because the director's fee is totally dependent on the  
 21 chairman and the chairman thinks all offers that he doesn't  
 22 originate are hostile. So when you get down to it, we're  
 23 right back to tenuring executives, and when you do that,  
 24 executives in America want to, many of them want to be tenured  
 25 just like academia, but they want to also have the salaries

1 of industry and the bonuses of industry, but not the commitment  
2 that academia has.

3 So when you get down to the blood, guts and feathers  
4 of the whole thing, we're talking about tenuring corporate  
5 executives and that's what we're, I think that's what this  
6 whole meeting is. One share, one vote has to be preserved  
7 if the system's going to be preserved. You cannot give it  
8 up.

9 MR. SOMMER: Having just participated in a Board  
10 of predominantly independent directors compelling a change  
11 in the Chief Executive Officer of a corporation, I take strong  
12 exception to the characterization of independent directors.

13 MR. PICKENS: He must have been a horrible CEO;  
14 that's the only thing I can say.

15 (Laughter)

16 MR. TROY: Commissioner Cox, I would be disappointed  
17 if the dialog on this important rule were to be dominated,  
18 captivated or controlled by takeover concerns. Because  
19 the issue is far broader than that. No one, I think, has in  
20 fact addressed what is the intrinsic value of the one share,  
21 one vote rule. I don't think anyone is going to tell us  
22 that the intrinsic value of the one share, one vote rule  
23 is a mechanistic allocation of voting rights, one vote for  
24 each share of common stock. I haven't heard that said, yet.

25 I think rather we have to look to the values with

1 which the rule may be associated. Values such as perhaps  
2 understandability of the corporate function and fairness,  
3 are people getting cheated or not.

4 I'ts important that the corporation can be  
5 understood by society and by its shareholders. Its important  
6 the people participating in the process are not getting cheated.  
7 But those values can be achieved without mechanistic applica-  
8 tion of the rigid rule which has been discussed here.

9 And I would suggest resorting to a rigid rule  
10 which causes many many other problems is a far too simplistic,  
11 easy way out, and perhaps we have to do it, as Smith, Barney,  
12 says, the old fashioned way, the more difficult way. The  
13 experiential way where each participant, the Commission,  
14 the courts, the various agencies, look to see, how can we  
15 ensure understandability and fairness without taking the  
16 easy way out by reaching to a rule that really doesn't work.

17 COMMISSIONER COX: Thank you.

18 CHAIRMAN SHAD: Thank you, gentlemen and Commissioner  
19 Cox.

20 We're here because the New York Stock Exchange has  
21 proposed a revision of their one share, one vote rule, and  
22 its with great reluctance that they come before us and make  
23 that proposal. And the American Stock Exchange also appears  
24 before us and says that if we approve the New York Stock  
25 Exchange rule, they'll further drop their requirements but

1 they strongly support our denial of the New York Stock  
2 Exchange's request with a view that improving, rather than  
3 in their view, improving the public vote of the shareholders  
4 rights, rather than reducing them.

5 The overwhelming testimony that we've heard during  
6 the past two days has been in opposition to our granting  
7 the New York Stock Exchange's request and many have gone  
8 beyond that and said that it should include mandating all  
9 others to come up to the present one share, one vote rule.

10 My question of this panel is, if that were the  
11 prospect of the Commission mandating one share, one vote  
12 across the board, and it does raise an enormous number  
13 of major issues that you've already mentioned, as well as  
14 others involving state law and the limits on the SEC's  
15 authority and what-not, but if we were to mandate a one  
16 share, one vote for all publicly owned companies, are there  
17 exceptions that would make it palatable or that the  
18 constituencies that you represent would be supportive of  
19 and I go back to what I raised in the previous panel,  
20 exceptions such as grandfathering all companies that already  
21 had, when they went public, they went public with a non-voting  
22 stock, and nobody was compelled to buy it. There wasn't  
23 any coercion, and yet the public did buy that non-voting  
24 stock.

25 It's been said that companies in order to do

1 acquisitions would want to be able to offer a non-voting  
2 stock and not in fact deliver control of their own company  
3 to the target company shareholders and that would be in  
4 the interest of their present shareholders to permit them  
5 to again offer a voluntary exchange.

6 The other shareholders don't have to accept it.  
7 It's like selling stock without a vote.

8 And the third exception would be the possibility  
9 that if a company wants to raise additional equity capital  
10 permitting it to sell non-voting stock, if it wished to do  
11 so. Again, there's no compunction on anybody to buy it,  
12 So, it's a free market type of decision.

13 And so those are exceptions to the one share, one  
14 vote rule that would really enable management to better serve  
15 their shareholders, and that would be the purpose of those  
16 like the grandfather exception.

17 Would any of you care to support that suggestion?

18 MR. PICKENS: May I comment?

19 CHAIRMAN SHAD: Yes.

20 MR. PICKENS: I would go along with grandfathering  
21 that's fine. If that's the way they went public, they bought  
22 it that way, that's it. I don't want managements today  
23 to go back and start fixing themselves up where they have  
24 control as if they were the founder of the company back 20  
25 or 30 or 50 years ago. I think that's wrong.

END T4

IN T5

TAPE 5

1 The second one --

2 CHAIRMAN SHAD: Well, would any of those exceptions  
3 permit that?

4 MR. PICKENS: Would what?

5 CHAIRMAN SHAD: Would any of the exceptions I just  
6 mentioned, --

7 MR. PICKENS: The other two?

8 CHAIRMAN SHAD: -- permit them to in effect consoli-  
9 date control in their hands?

10 MR. PICKENS: Would it?

11 No, I'm just saying that I'm ready to grandfather  
12 number one. Okay, number two, where you acquire somebody,  
13 the target company that would have more stock than you would  
14 have in voting control, don't pick out a target like that  
15 if you have any problems with that. If you're going to  
16 make that offer.

17 We did it with Pioneer, and we issued more stock  
18 to them than we had outstanding, but they had the same votes  
19 as we had, and there was no problem with that. That doesn't  
20 bother me.

21 And the third one I would say, no, to the third  
22 one. You don't need to issue any other kind of stock to  
23 raise capital. Raise capital with your common stock. Let  
24 everybody have the same break.

25 CHAIRMAN SHAD: Would any of the others on the

1 panel support raising the standard across the board with  
2 certain exceptions?

3 MR. SOMMER: Without saying that I would support it,  
4 Mr. Chairman, and without retreating from the position that  
5 I think I expressed to the effect that I think the Commission  
6 should keep its hands off of the matter, it seems to me  
7 that if you were going to frame any kind of a compromise  
8 position, at a minimum, companies that are presently capital-  
9 ized and have outstanding dual classes of common stock,  
10 regardless of whether it was created at the time when  
11 they went public or not, I think they should be grandfathered.

12 And I think they should have the ability to use  
13 that lesser class of voting stock, for financings and for  
14 acquisitions. It seems to me that would be the minimum fair-  
15 ness.

16 CHAIRMAN SHAD: And so you would, and I want to  
17 be clear on this, --

18 MR. SOMMER: I didn't say I supported it.

19 CHAIRMAN SHAD: What were you saying?

20 MR. SOMMER: I was saying that if you were disposed  
21 to seek a middle ground, it seems to me that those would be  
22 essential elements of it.

23 CHAIRMAN SHAD: Grandfathering all regardless of  
24 how they got to an A/B capitalization, maybe as of some date  
25 in the past, Senator Metzenbaum mentioned January of last year,

1 as I recall, as a cutoff, but you'd grandfather all that  
2 presently that have A/B capitalization and permit them to use  
3 that non-voting stock for future acquisitions.

4 MR. SOMMER: Because they have taken action to  
5 recapitalize based upon the status of the law and the  
6 regulations at this time.

7 CHAIRMAN SHAD: Well, how about some of the members  
8 of the last panel suggested that even the latter of that  
9 required shareholder approval; that if they're going to issue  
10 more non-voting shares, it be approved by the present  
11 shareholders.

12 MR. SOMMER: I would not favor that.

13 CHAIRMAN SHAD: Mr. Troy?

14 MR. TROY: I would add at least two more categories  
15 of exceptions, both of which I can identify but neither of  
16 which I can really define. The first being an exception  
17 put in the vocabulary of the public choice literature which  
18 I know Commissioner Grundfest is familiar with and I can't  
19 properly define for you.

20 The second category being for those actions which  
21 the boards of directors under state law may feel obliged  
22 to take in order to protect their stockholders, also at  
23 the risk that if you don't do it, you have created the  
24 doomsday machine that stops all takeovers and all trading.

25 Again, I would observe that some of the concerns

1 in these areas --

2 CHAIRMAN SHAD: Well, wait. I'm not sure I'm with  
3 you on that point.

4 MR. TROY: Yes. If you impose a rule on all means  
5 under your jurisdiction, which involves the trading of stock,  
6 which say that, there must be one share, one vote, and or  
7 no other companion security of a common stock nature that  
8 does not share that, it cannot be traded.

9 CHAIRMAN SHAD: Then you prohibit the issuance.

10 MR. TROY: No, that's not market regulation; that's  
11 substantive regulation. That's regulation which I believe  
12 goes beyond what the Commission has done, it gets us right  
13 into federal regulation of corporations as such. Beyond that,  
14 I would again call attention to the fact that a number of  
15 the issues here really belong in the going-private area,  
16 and could be more profitably reviewed there, rather than  
17 dragged into this area where they tend to muddy the waters.

18 My preference however is no rule by the Commission,  
19 that we abide by what I understand is current corporate  
20 practice that the one share, one vote phenomenon apparently  
21 represents over 90 percent of current practice, the exceptions  
22 then can be reviewed to see if they do present a problem that  
23 requires rule by an Exchange, rule by the Commission, action  
24 by state courts, and so forth.

25 CHAIRMAN SHAD: Let me challenge or ask you to

1 amplify your point on the doomsday machine or the total defense  
2 of a company issuing non-voting stock, and it could still  
3 be bought out. That's not a total defense. What would  
4 stop a cash tender offer from taking over regardless of  
5 what capitalization they had.

6 MR. TROY: Well, if the market regulation rule  
7 covers all jurisdictional means, the tender offer obviously  
8 can't proceed at that point. If it distinguishes between  
9 certain markets and tender offers, then you have chaos. I  
10 don't know which is better from the standpoint of the  
11 defender if he seeks to take advantage of this.

12 What you do is take away the public market, sub-  
13 stitute a proliferation of tender offers and private deals  
14 at that point, but I think that comes under the label of  
15 chaos.

16 CHAIRMAN SHAD: Well, I just challenged the  
17 generalization that if the company, a total defense would  
18 be to have an A/B capitalization, I don't --

19 MR. TROY: No. The defense comes about precisely  
20 because going to the B capitalization stops all public  
21 trading, by virtue of the rule that says that trading  
22 can't occur if a company chooses to do this. I think its  
23 the wrong result to reach; I don't think you should go that  
24 far.

25 COMMISSIONER GRUNDFEST: Excuse me. Mr. Troy, would

1 you want to defend a business judgment rule lawsuit that  
 2 would be brought against any board of directors that decides  
 3 unilaterally to suspend all trading on the public market  
 4 as a means of defending against a takeover?

5 MR. TROY: I think you've made my point. That  
 6 where the control that's going to discipline and that's  
 7 where the current regulation of corporations resides and is  
 8 improving case by case.

9 COMMISSIONER GRUNDFEST: Would you be looking forward  
 10 to defending that lawsuit?

11 MR. TROY: I must tell you as a common law attorney  
 12 that I'd have to look at the facts.

13 COMMISSIONER GRUNDFEST: Thank you.

14 CHAIRMAN SHAD: Let's see if any members of the  
 15 senior staff have comments or questions.

16 Director Ketchum?

17 MR. KETCHUM: Mr. Sommer, if I can get back just  
 18 a second to your suggestions with respect to the Commission's  
 19 authority. You note the viewpoint of yours and fellow  
 20 Commissioners in 1975, yet while the Commission's oversight  
 21 of self regulatory organizations were substantially expanded  
 22 at that point, the means in which it reviewed rules was  
 23 revised, there were a number of discrete categories between  
 24 34 and 75 that the Commission did have authority over with  
 25 respect to self-regulatory organizations.

1           One of those categories was listing requirements.  
2 Why is 1975 so crucial in light of the fact that the  
3 Commission has always had authority with respect to listing  
4 requirements on the plain language of the Statute.

5           MR. SOMMER: I think the problem is one of involving  
6 in corporate governance and I think that's different from  
7 listing standards in terms of the number of shares that are  
8 in the float; I think that was the sort of thing that was  
9 behind the provision in the 1934 Act.

10           Float requirements I think clearly the Commission  
11 has a concern with that. Concerns with regard to the issuance  
12 of stock and the listing of the stock and that sort of thing.  
13 I don't think that that authority over listing standards was  
14 intended to extend to the standards that are denominated  
15 in the name of the committee that I cochaired, qualitative  
16 listing standards.

17           And I believe the legislative history of the '34  
18 Act would indicate that that was a concern of Congress at  
19 that time.

20           MR. KETCHUM: And you would find that notwithstanding  
21 the quote that Commissioner Fleischman quoted earlier that  
22 seemed to in connection with 14A take great comfort that  
23 equity securities bought on a public exchange provided for  
24 fair corporate suffrage.

25           MR. SOMMER: Say it again?

1 MR. KETCHUM: The quote was, fair corporate suffrage  
2 is an important right that should attach to every equity  
3 security bought on a public exchange.

4 MR. SOMMER: And I think that fairness again,  
5 that was in relation to the adoption of Section 14A, and  
6 I think that fairness was intended to be accomplished basically  
7 through disclosure, which prior to 1934 was virtually non-  
8 existent with regard to proxy matters.

9 CHAIRMAN SHAD: Director Quinn?

10 MS. QUINN: I'd like to go back to Commissioner  
11 Cox's question and ask it perhaps in a slightly different way.  
12 It would seem to me that takeovers are the primary motivation  
13 for a proposal that would have implications far beyond the  
14 takeover area, and I wonder if the real concern is takeovers,  
15 whether the issues ought not to be fought out in regulating  
16 the takeover area, rather than in proposing something that  
17 would essentially remove the ability of people to bring  
18 proxy contests, remove the ability of shareholder proponents  
19 to introduce shareholder proposals to a corporation; remove  
20 any other kind of substantive voting, aside from the takeover  
21 process, and bring essentially the management into a position  
22 of simply perpetuating itself through the voting mechanism.

23 And if we're really talking only about takeovers,  
24 why would we do something so across the board and with such  
25 grave implications, rather than simply debate whether or not

1 there ought to be a limitation on the takeover process?

2 MR. SOMMER: I think that has a good deal to be  
3 said for it.

4 MS. QUINN: So really what ought to happen is  
5 essentially that we say no, you ought not to do this  
6 tremendously consequential action that has consequences  
7 far beyond the takeover process, but rather redirect  
8 ourselves to the takeover area?

9 MR. SOMMER: No. I'm saying that I think those  
10 subjects ought to be considered in the takeover arena but  
11 that does not mean that you can't deal with this in the  
12 context of the New York Stock Exchange's proposal and have  
13 it rereviewed in the course of consideration of matters  
14 relating to takeovers.

15 MS. QUINN: Well, let me ask you specifically;  
16 are you troubled at all by having management essentially  
17 control who manages the corporation with no ability of  
18 the public shareholders to take issue with management?

19 MR. SOMMER: I think there are a great number of  
20 controls on the management, even when they have voting  
21 control through bifurcated arrangements of that sort.  
22 For one thing, if the market in the unissued stock deteriorates  
23 that's going to be adverse. It's going to affect probably  
24 the price of the stock that they hold themselves.

25 The second thing is they are in the competitive

1 market, and they are going to be under considerable pressure  
2 because of competition to do the best possible job that they  
3 can.

4 They have commercial bankers and investment bankers  
5 who'll be looking over their shoulders to make sure that  
6 their performance is up to snuff.

7 You don't have cases in which shareholders undertake  
8 to throw out directors or management. Managements get  
9 thrown out by independent directors because of pressures  
10 from banks, because of public disclosures that are adverse  
11 to the company. They don't get thrown out because the  
12 shareholders rise up en masse and threaten to change management.  
13 That is simply a myth.

14 They get thrown out because of takeovers. I'll grant  
15 you that. And obviously, if you have a capital structure  
16 that prohibits a takeover, that particular mechanism is  
17 going to be denied. But there are many other reasons and  
18 many other ways in which managements are changed, not simply  
19 by takeovers and not because of any mass uprising on the  
20 part of the shareholders.

21 MR. PICKENS: May I comment, please?

22 You're talking about the value of the stock here  
23 that if the market price of the non-voting stock went down,  
24 the other stock prices would suffer too. Consequently,  
25 management would have problems. I don't believe that.

1           And I'll tell you why I don't believe that.  
2           They don't have any meaningful investment in this. You take  
3           the business roundtable which is the 200 largest corporations  
4           in America, they own less than one tenth of one percent of  
5           the stock of the companies that they run.

6           I just mentioned that Smith over at General Motors  
7           has 31,000 shares and has a salary of \$5 million. Look at  
8           the Fortune 500 study of the Summer of 1986, where they  
9           even point out that 9 percent, 9 percent of the CEOs of  
10          the Fortune 500 don't even own one share of stock in the  
11          company; don't even own one share.

12          I thought you had to own a share to get an annual  
13          report.

14          MS. QUINN: Don't you think there's a discipline  
15          in the fact that shareholders could vote? I mean, there  
16          are 60 to 80 proxy contests a year and it seems to me that  
17          there is somewhat of a discipline on the fact that if you  
18          do something tremendously consequential to the shareholders'  
19          interest that you can have the shareholders take exception  
20          to you, and if you listened to the earlier panels, they're  
21          suggesting that one of the reasons that proxy contests are  
22          not more effective is because the corporations have the control  
23          of the assets and the shareholder is asked to fund his own  
24          contest on the hopes that they're going to prevail, and  
25          perhaps get indemnified by the corporation. But --

1 MR. JOHNSON: If I could comment?

2 In our instruction of our operation, we only  
3 allowed a ten to one vote for directors, on all of the  
4 matters both classes of stock have to agree in order to  
5 make any other changes to the corporate structure. So you  
6 can structure this so everyone has a right to vote on every-  
7 thing except if somebody buying stock and putting his own  
8 board in and driving the price of the stock down so he can  
9 pick the rest up for a bargain.

10 That's what you want to stop; that phenomena.  
11 The only reason we did it was to stop the games.

12 MS. QUINN: But you could also argue that that was  
13 exactly centered on the entrenchment issue which is the only  
14 thing of consequence to management was essentially whether  
15 they could be --

16 MR. JOHNSON: No, I've been part of the management  
17 from day one when I founded the company I didn't have two  
18 classes of stock. I ran the company for 16 years without  
19 two classes of stock. Why did we change our attitude two  
20 years ago? Cause of all the monkey business going on by  
21 these guys manipulating in the market place. We didn't want  
22 to be manipulated. At the time, and then when you make  
23 investments in the future in technology, and you're sacrificing  
24 present profits for future gains, you don't want someone  
25 to swoop in and manipulate and take advantage of your .

1 shareholders, so you have to protect them by setting up  
2 mechanisms because of the way things are structured in  
3 order to be able to get the full realization out of the  
4 investment your investors have made.

5 You can't let the manipulators play with this,  
6 and they do.

7 MS. QUINN: Supposing someone made an offer for  
8 your entire company, all of the shares of the stock at a  
9 healthy premium, that's not a gain, but shouldn't the  
10 shareholders have the right to decide whether or not to  
11 sell out at that point?

12 MR. JOHNSON: My shareholders have the right to  
13 vote on the issue. As I say, almost 75 percent of the  
14 public shareholders voted to do it this way. It wasn't  
15 done by insiders; it was done by outsiders. It was their  
16 decision. Why should they be denied?

17 MR. QUINN: Did they vote simply on this issue  
18 or was there a preference on the non-voting stock?

19 MR. JOHNSON: On the non-voting stock, we've got  
20 a preferential dividend of ten percent, if we pay dividends,  
21 but we announced that we had never paid dividends, so they  
22 couldn't look for a preference they'd never had. But it  
23 was there if we decided to pay dividends at some point in  
24 time. But we've always, we've invested the money in the  
25 corporation to build for the future.

1           The only way you're going to build jobs and create  
2 opportunity is by reinvesting; not by manipulating stock.  
3 Manipulating stock is just going to inflate the prices; its  
4 not going to create jobs.

5           CHAIRMAN SHAD: Are there any other comments or  
6 questions from the senior staff?

7           COMMISSIONER FLEISCHMAN: May I ask another  
8 question?

9           CHAIRMAN SHAD: I was going to ask Commissioner  
10 Fleischman, you opened this session, so would you care to  
11 raise any other issues?

12           COMMISSIONER FLEISCHMAN: Thank you.

13           Mr. Troy made a point earlier that I'd like to  
14 come back to. I think each of the panelists has adverted to  
15 it one way or the other.

16           Mr. Troy characterized the one share, one vote  
17 as a mechanic or a mechanism. And I would like to ask him  
18 to talk a little bit about that.

19           The Court of Appeals of New York, oh, some 80 years  
20 ago, in what is now called a different environment, but perhaps  
21 still applicable, characterized that voting right as an  
22 essential property of the stock, and in the course of its  
23 discussion, it focused on the ability through the use of that  
24 property to demand an appropriate stewardship by management.

25           Can the voting rights be characterized simply as

1 a mechanic? Is it not an essential feature of the corporate  
2 accountability system?

3 MR. TROY: I think you have several questions  
4 wrapped into one, and I'll try my best. I was not charac-  
5 terizing the vote as a mechanic, but rather the rule which  
6 would arbitrarily say you may not have within a class of  
7 common, an allocation of votes that does not work one for  
8 one. That's a different proposition.

9 I believe also the Court of Appeals -- well, I'll  
10 refrain from comment on the Court of Appeals' opinion.

11 The concern I wished to express wasn't that the  
12 vote is not important, but that there not be an arbitrary  
13 nationwide no exception rule that says, you always have to  
14 take an equity security arbitrarily or substantially called  
15 common stock, and allocate the votes exactly that way.

16 One of the reasons is indeed implicit in what  
17 the Court of Appeals said. The person holding that voting  
18 right has the right to vote to change it. That's one of  
19 the many reasons not to go to an arbitrary no exceptions  
20 rule on that account. My greater concern is that this one  
21 share, one vote has become more or less of a political slogan,  
22 and as such, gets divorced from the underlying values that  
23 we really ought to try to protect, and are not sufficiently  
24 or only protected by resorting to a rigid mechanical rule  
25 of this kind.

1                   COMMISSIONER FLEISCHMAN: Yes, Mr. Sommer was  
2 talking about the other means of protecting, and are they  
3 sufficient to assure corporate accountability?

4                   MR. TROY: Well, I'd have to refer to the other  
5 testimony given in this hall today and yesterday, which I  
6 believe is to the effect that the vast majority of corporations  
7 not under this rule still pursue this sort of practice, and  
8 that's why it has been our practice not to look to a rule  
9 with exceptions that regulates the area, but rather look to  
10 the situation where this Commission, the state legislatures,  
11 the Federal and the state courts, address those situations  
12 which not only are not one share, one vote but are deemed  
13 to present a specific abuse.

14                   And see if that agency, that court, that legislature  
15 is the proper one to come up with a remedy that addresses  
16 that abuse, rather than a rigid mechanistic rule across  
17 the board.

18                   COMMISSIONER FLEISCHMAN: Thank you, Mr. Chairman.

19                   CHAIRMAN SHAD: Commissioner Grundfest?

20                   COMMISSIONER GRUNDFEST: Mr. Pickens, you've waxed  
21 eloquent about the value of the vote in the corporate control  
22 context, and I wonder if you could explore for a moment the  
23 rights of the limited partners in Mesa Petroleum Company  
24 Limited Partnership. As I understand in 1985 a proposal  
25 was put to the stockholders of Mesa that involved

1 reorganization of what was a corporation, a publicly traded  
2 corporation, into a newly formed Delaware limited partnership.  
3 And in the proxy materials issued in connection with that  
4 proposed exchange, there was the statement that among the  
5 special factors that stockholders should consider, was the  
6 reduced voting rights of limited partners compared to  
7 stockholders.

8 I wonder if you could expand for us and explain  
9 what the differences are between the rights of the limited  
10 partners and the rights of the stockholder?

11 MR. PICKENS: Well, I'm the general partner in  
12 that partnership which I have different liabilities of course  
13 than the limited partners do. That would be one reason.

14 But the reason we went from a corporation to  
15 a limited partnership was because we were dealing with  
16 depletable assets. For years, Mesa had run an exploration  
17 in drilling budget over \$400 million which was immense for  
18 a company the size of Mesa.

19 By the time we got down to 1984, we had a pretty  
20 good indication of what had happened to the oil industry.  
21 We could no longer drill and replace our reserves because  
22 it wasn't economically sound to do so. So in 1985, we decided  
23 that we were going to deplete the reserves of the stockholders  
24 that we should do it in the most efficient form possible  
25 which would be to flow through directly to the stockholders

1 and therein became the limited partnership.

2 So in late 1985, December of '85, we paid \$170  
3 million in recapture tax, went out of the corporation,  
4 liquidated in a 337 liquidation back into a limited partner-  
5 ship which will be concluded in the first quarter of 1987.  
6 And over that time, for 1986, we have distributed to stock-  
7 holders that cash flow from the production that was being  
8 depeleted in the corporation but in a more efficient form  
9 went out through the limited partnership.

10 Now, in the limited partnership, I can be voted out  
11 as general partner by two-thirds of the limited partners,  
12 and there is an annual, we do have an annual meeting which  
13 is unusual for a limited partnership to have but they do,  
14 they voted on the Pioneer situation which we just acquired  
15 and we put out more limited partnership units than we  
16 had outstanding at the time,

17 CHAIRMAN SHAD: Why two thirds instead of a majority.

18 MR. PICKENS: Two-thirds to vote me out as  
19 general partner.

20 CHAIRMAN SHAD: But why not a majority? In all  
21 these managements we're talking about could be voted out by  
22 a majority.

23 MR. PICKENS: I don't remember why it was two-  
24 thirds. I'll go back and be glad to tell you. Let me say  
25 this before this group.

1 CHAIRMAN SHAD: Some say that's a supermajority.

2 MR. PICKENS: Well, let me say this. If we get  
3 51 percent to take me out, we'll forget the two-thirds.  
4 How's that. I've just adjusted that rule.

5 COMMISSIONER GRUNDFEST: All right, so we're going  
6 to amend Article 14 of the partnership agreement.

7 MR. PICKENS: That's right. If 51 percent don't  
8 want me, I shouldn't be there anyway.

9 COMMISSIONER GRUNDFEST: What would the differences,  
10 the proxy material suggests that there are differences in the  
11 voting rights between the limited partners and stockholders.  
12 What would those differences be?

13 MR. PICKENS: I can't tell you what they would be.  
14 I know that as a general partner, I have liabilities that  
15 the limited partners don't have. And I'm supposing that  
16 that's that there is some limit on the limited partners  
17 to vote in certain situations but not on acquisitions or  
18 as I said, I can be removed.

19 CHAIRMAN SHAD: Commissioner Peters?

20 COMMISSIONER PETERS: Thank you, Mr. Chairman.

21 Mr. Troy, in making a point earlier, you reminded  
22 us that the bulk of the corporations that trade on our national  
23 markets today have a one share one vote capital structure  
24 and that the A/B capitalization approach is if not rare, it is  
25 certainly an exception to the rule.

1           It has been suggested by other panelists that were  
2 we to approve the New York Stock Exchange Rule proposal,  
3 that the dual class capital structure would swallow the rule  
4 and become the norm. Would you care to comment on that?  
5 Do you think that that is a likely outcome?

6           And any other panelists.

7           MR. TROY: I can't speak to the market forces at  
8 work, although I seriously doubt its what you suggest  
9 commentators are suggesting it might be.

10          MR. JOHNSON: If you will look at the data that I  
11 provided on the vote, and get some indication of the difficulty  
12 with which you have to achieve 51 percent of your outside  
13 shareholders, you'll find that not too many companies will  
14 be able to do it.

15          COMMISSIONER PETERS: Well, what about companies  
16 opting to do that at the first instance? That is to say  
17 more companies going public with the dual class structure?

18          MR. JOHNSON: That's quite simple to do, but once  
19 you're public, it's quite difficult with this New York Stock  
20 Exchange to make the conversion.

21          COMMISSIONER PETERS: To turn it around.

22          MR. JOHNSON: To turn it around. So effectively,  
23 if you're willing to let the people go public, there's  
24 really less risk once they are public in having it change  
25 since the shareholders would make that decision.

1           At the time you're going public, the management  
2 makes a change; at the time you make an exchange subject to  
3 being public, the shareholders make that decision under these  
4 new rules.

5           COMMISSIONER PETERS: Mr. Troy? .

6           MR. TROY: I should like to add the obvious so  
7 that nobody misses it; namely, that the large shareholders  
8 who have spoken here in this room are obviously going to  
9 exercise their vote and probably carry the day.

10          COMMISSIONER PETERS: Yes. But they say they  
11 are not capable of carrying the day.

12          MR. TROY: Rather modestly stated.

13          COMMISSIONER PETERS: Yes.

14          Thank you, Mr. Chairman.

15          CHAIRMAN SHAD: Commissioner Cox?

16          COMMISSIONER COX: Mr. Pickens, in your opening  
17 statement, you touched briefly on your reasons for suggesting  
18 that deciding on disparate voting rights is not appropriate  
19 for the shareholders to determine.

20                 But I guess I would like to ask once again, I've  
21 asked other people who've testified yesterday and today,  
22 but to say once again why you think that it's inappropriate  
23 to offer the shareholders the opportunity to decide the voting  
24 rights for themselves, since I've noticed from some of the  
25 statements from the United Shareholders of America, and

1 so forth, that you place great weight on shareholder determina-  
2 tion and suggest votes that needn't be disclosed to avoid  
3 pressure or that.

4 But why would shareholders be incapable of deter-  
5 mining this in their best interests?

6 MR. PICKENS: Well, I, let's just touch once again  
7 on the confidential vote. I would have a lot more confidence  
8 in a vote by shareholders where the vote was confidential,  
9 that there would be no pressure put on the institutional  
10 holders by management, and that I felt comfortable that there  
11 had been no pressure applied any place for the votes.

12 Second, I don't want to see present stockholders  
13 disenfranchise future stockholders. Now, I also believe  
14 in the democratic process and so if the majority of the  
15 stockholders want to have dual classes of common stock,  
16 then I have to abide by that. I would like to see a time  
17 limit put on that and it voted on again at some time in  
18 the future, because ownership does change, and I just don't  
19 want to see future stockholders get stuck with a deal that  
20 was in haste, was run by them, and that they may not, it  
21 may not have been a wise decision on such an important issue.

22 COMMISSIONER COX: But, I mean, future stockholders  
23 would be aware, it would be disclosed that what they were  
24 buying, so I'm, I guess I'm a little puzzled at the problem  
25 for future stockholders, I would have thought its the present

1 stockholders who perhaps were fooled or didn't know what they  
2 were doing or were incapable of deciding in their best  
3 interest, rather than future stockholders who were faced with  
4 the opportunity to buy a share which has less voting rights  
5 than other shares.

6 MR. PICKENS: I appreciate the argument, and I don't  
7 think it's a perfect solution, but I do know that in the  
8 studies that we've seen by Jensen and Gerrold and Bradley,  
9 and others, that the pressure on management has attained  
10 results in this country as far as market value is concerned.  
11 The Goldman, Sachs study is one that '84 and '85, that 30  
12 percent of the market increase was the restructuring of  
13 corporate America.

14 So if we're going to turn over control to these  
15 people, I think we're going to have to go back and look again  
16 at where it got us before. I think corporate America today  
17 is not competitive because of the lack of accountability.  
18 So I guess I'm struggling and hanging on to whatever account-  
19 ability we can keep in the system and keep the pressure on  
20 the management to do the job.

21 I think study after study will clearly show that  
22 there's very little ownership in the major corporations in  
23 America by the management of the companies. And so if we're  
24 going to put those people in a position where they have total  
25 control, and we can't do anything about it, I mean they're

1 there to stay, well, you can see what's going to happen to  
2 the performance of the stocks in the market.

3 I mean, why is it that Gulf Oil, for instance,  
4 was selling at 35 percent of the appraised value of the  
5 assets? It was because Gulf Oil was never considered it  
6 was never going to go anyplace with the management that they  
7 had, and it was selling on a yield multiple, a dividend  
8 multiple is what it was.

9 So, I mean, if we're going to turn it over to them,  
10 I don't understand what is the process to be able to make  
11 them accountable to the non-voting stockholders.

12 MR. JOHNSON: Could I comment as to the confidential  
13 vote? You made a comment about having a confidential vote.

14 When we went through the process of the proxy, and  
15 roughly about 40 percent of our stock was held by individuals  
16 a good number of them in street name, about two-thirds of  
17 those in street names. Those names aren't available. In  
18 fact, many times the investment banking firms don't mail  
19 the proxies to the shareholders. And on an issue like this  
20 a change in the charter, the investment banking firm cannot  
21 vote the proxy in. It must be voted by the shareholder.  
22 And the shareholders' name is always withheld from the  
23 corporation.

24 So all that comes back to the corporation or the  
25 transfer agent is one proxy from the investment banking

1 firm saying, yea, no, or not voted, but no names are ever given.  
2 given. And in terms of going through the banks, the nominees  
3 for the trusts for these large investor groups, those nominees  
4 also hide the names. The votes that come back come back in  
5 the name of the nominee, do not come back in the name of  
6 the trust.

7 You've got no access at all to find out who these  
8 votes are coming back for. So you don't know, your institu-  
9 tional votes, you do not know the votes in street names.  
10 You'll probably find out about 15 percent of the shareholders  
11 and the rest of them will be hidden from you right now under  
12 the present rules.

13 COMMISSIONER COX: Thank you.

14 CHAIRMAN SHAD: I think that'll be the last word.

15 Thank you, very much, ladies and gentlemen. We'll  
16 reconvene at 2:30 with the State Security Regulators Panel.

17 Thank you very much, ladies and gentlemen.

18 (Whereupon, at 1:03 p.m., the hearing was recessed  
19 for lunch, to reconvene the same day, Wednesday, December 17,  
20 1986, at 2:30 in the same place.)

21 (Continued on following page.)

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END T5

A F T E R N O O N S E S S I O N

2:35 p.m.

CHAIRMAN SHAD: Ladies and gentlemen, this is a continuation of our hearings on the one share, one vote proposed revision by the New York Stock Exchange.

This afternoon's panel is a group of state securities regulators, a group of two, I should say. And it is suggested that even though with this small group and we do have 45 minutes, why please give a brief five-minute type opening statement. Sometimes some of the commentators have built up to their conclusions and then not had time to give them, so I suggest you might want to give your specific recommendations up front and then the rationale for them.

And when you see the green light, that'll mean you have three minutes remaining; the yellow light, one minute remaining, and so I suggest that you begin your summation at that point, and then the red light says you're done.

So with that brief thought, we would like to start with -- where's Mr. Tom? Oh?

MS. BENDER: Mr. Tom is fogged in in Salt Lake and so he is unable to be here. I heard from him very late last night.

CHAIRMAN SHAD: And so you'll present, are you

1 from California, too?

2 MS. BENDER: I am his Chief Deputy; I will testify  
3 on his behalf.

4 CHAIRMAN SHAD: Thank you very much, and we'll  
5 start with you, what is it, Mrs. Bender, Ms. Bender?

6 MS. BENDER: Mrs. Bender is fine.

7 CHAIRMAN SHAD: Thank you.  
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1 STATEMENT OF CHRISTINE BENDER, CHIEF DEPUTY COMMISSIONER,  
2 CALIFORNIA DEPARTMENT OF CORPORATIONS

3  
4 MS. BENDER: Mr. Chairman, members of the  
5 Commission, my name is Christine Bender and I am testifying  
6 on behalf of Franklin Tom, Commissioner of Corporations  
7 of the State of California.

8 With a staff of over 50 lawyers and over 100  
9 accountants, I believe that we are the largest securities  
10 regulatory agency among the States. We respectfully suggest  
11 that the Commission disapprove the New York Stock Exchange's  
12 rule proposal and proceed promptly to mandate voting rights  
13 requirements on the American Stock Exchange and the National  
14 Market System of the NASD, equivalent to the existing New  
15 York Stock Exchange standard.

16 I believe that approval of the Exchange's proposed  
17 rule will materially undermine management accountability.  
18 The fact that managements are subject in a very public way  
19 to shareholder scrutiny through the voting process is an  
20 indispensable check on management's self-interest. Rational  
21 management will not disregard a substantial opposition vote  
22 on a proposal brought to shareholder vote, including a  
23 substantial withholding of votes in the election of a  
24 director.

25 Moreover, shareholder voting rights is one of the

1 principal underpinnings of the Commission's disclosure  
2 system. While a registrant's obligation to make timely  
3 and accurate dissemination of material information is a  
4 general obligation to the investing public which is deemed  
5 necessary to make informed investment decisions, the  
6 elaborate disclosure requirements for proxy statements under  
7 Section 14A of the Exchange Act are specifically geared to  
8 provide shareholders with material information necessary  
9 for informed shareholder votes.

10 One must wonder about the use of all this dis-  
11 closure to shareholders who either have no voting rights,  
12 or whose rights are so limited that they are ineffectual.  
13 And as Ms. Quinn noted yesterday, in the event that directors  
14 are elected only by those with supervoting shares, it is  
15 hard to see how they could be deemed independent directors.

16 The California Corporate Securities Law has  
17 set forth since 1969 a blanket exemption from qualification  
18 requirements for securities listed on the New York Stock  
19 Exchange, and since 1971, for securities listed on the  
20 American Stock Exchange. Merit standards for securities  
21 which must be qualified have long set forth an equal voting  
22 rights standard and the prohibition on non-voting common  
23 stock.

24 Approximately two years ago, the NASD requested  
25 a comparable exemption for securities listed on the national

1 market system. In that regard, we satisfied ourselves that  
 2 there was substantial equivalence among the national market  
 3 system, the New York Stock Exchange and the American Stock  
 4 Exchange in their quantitative standards, but we were deeply  
 5 troubled by the lack of governance standards, particularly  
 6 so far as they related to voting rights, on the part of the  
 7 NASD.

8           Ultimately, we proposed an exemption for certain  
 9 national market systems securities that met minimum corporate  
 10 governance standards comparable to those imposed by the  
 11 American Stock Exchange. Notwithstanding our rule proposal,  
 12 the NASD sponsored legislation last summer which would have  
 13 set forth blanket exemptions for NMS securities. The  
 14 Department of Corporations vigorously opposed this legislative  
 15 effort of the NASD.

16           The legislation failed passage amid considerable  
 17 legislative concern among California legislators over ap-  
 18 propriate corporate governance standards and over the lack  
 19 of voting rights standards on the part of the NASD.

20           Some have espoused the argument that the issue  
 21 of voting rights is a state corporate matter with which the  
 22 Commission should not interfere. But it is impossible for  
 23 the Commission to not materially and decisively affect  
 24 state securities laws in this area. That is because no  
 25 matter what the Commission does in approving or disapproving

1 the New York Stock Exchange's proposal, it will commit the  
2 nation to a national standard on voting rights.

3 A Commission mandate for a particular voting  
4 standard would impose a Federal corporate rule applicable  
5 to all exchanges listed and NMS securities, a combination  
6 of the existing NASD non-standard for the national market  
7 system, the current New York Stock Exchange proposal, and  
8 the forthcoming proposals of the American and Pacific  
9 Stock Exchanges will just as surely impose a standard.

10 And the only question in our view is which standard  
11 the Commission prefers. Insofar as California is concerned,  
12 we currently observe a one-class voting stock capitalization  
13 standard for all public companies not listed on the exchanges  
14 It is impossible for California to continue that standard  
15 in the face of the Commission's approval of the New York  
16 Stock Exchange's rule.

17 In summary, the Commission does not have a state  
18 neutral alternative open to it. Whether it approves or  
19 disapproves the New York Stock Exchange proposal, it will  
20 establish a federal standard in voting rights. And in  
21 conclusion, we urge the Commission to institute proceedings  
22 to disapprove the New York Stock Exchange's proposed change  
23 in its rules, and to commence proceedings under Section 19  
24 of the 1934 Act to require equal voting rights for common  
25 stock traded on national exchanges and the national market

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system.

Thank you.

CHAIRMAN SHAD: Thank you, Ms. Bender.

Mr. Daniel Bell from the North American Securities  
Administrators Association.

Mr. Bell?

1 STATEMENT OF F. DANIEL BELL, III, PRESIDENT, NORTH AMERICAN  
2 SECURITIES ADMINISTRATORS ASSOCIATION

3 MR. BELL: Good afternoon. I am Dan Bell, president  
4 of the North American Securities Administrators Association.  
5 or NASAA. On behalf of the membership of NASAA, I appreciate  
6 the opportunity to present testimony regarding the proposed  
7 rule change by the New York Stock Exchange.

8 The move by the New York Stock Exchange to  
9 terminate its policy of one share, one vote, undermines  
10 one of the keystones of corporate democracy, and diminishes  
11 the ability of public investors to protect themselves.  
12 The Commission is being asked by the New York Stock Exchange  
13 to in effect sanction corporate apartheid. Due to the  
14 proposal by the New York Stock Exchange, the membership of  
15 NASAA recently adopted a resolution stating:

16 First, NASAA opposes the New York Stock Exchange  
17 proposal to eliminate its one share, one vote policy.

18 Secondly, NASAA favors one share, one vote for  
19 all markets regulated by the SEC, and urges all self-regulatory  
20 organizations to move toward adoption of that policy.

21 Thirdly, NASAA urges the SEC to take positive steps  
22 to preserve and require one share, one vote for all public  
23 markets as being consistent with the investor protection  
24 objectives of the Securities Exchange Act of 1934.

25 The New York Stock Exchange has cited the need to

1 be able to compete with both the American Stock Exchange.  
2 which has lower voting rights standards, and NASDAQ which  
3 has no voting rights standards, as a primary reason for the  
4 elimination of the one share, one vote policy. Changing  
5 existing policies and standards which are fundamentally  
6 sound simply because other trading market places have not  
7 adopted them, not only will weaken the New York Stock  
8 Exchange's position of leadership, but will result in  
9 decreased market differentiation, renewed competitive pressures  
10 and a new round of proposals among the markets to accomplish  
11 competitive advantages attractive to corporate management,  
12 as has been demonstrated by the AMEX proposal to rescind  
13 their weaker standards.

14 Rather than allowing the race to the lowest common  
15 denominator, we urge the Commission to mandate the development  
16 of a uniform one share, one vote standard. The New York  
17 Stock Exchange has made it clear that this is preferable.  
18 The AMEX has also stated its willingness to impose standards  
19 similar to the New York Stock Exchange, if the NASD would  
20 do likewise.

21 While the NASD has proposed certain corporate  
22 governance standards, these standards are particularly notable  
23 for the absence of voting standards. However, the NASD  
24 stated in its testimony yesterday that 95 percent of the  
25 companies listed on the NMS provide for equal voting rights.

1           Therefore, it appears to me that such a mandate  
2 from the Commission is a realistic and viable option.

3           Now, some may ask, is all of this a big ado about  
4 nothing. Some will claim that even without a one share,  
5 one vote standard, few corporations will seek disparate  
6 voting rights.

7           We believe to the contrary. It is clearly apparent  
8 that the threat of hostile takeovers has caused corporate  
9 America to develop this ultimate defensive tactic. The markets  
10 continually and consistently undervalue companies. It is  
11 easy to understand the paranoia of management of corporate  
12 America. However, to the extent that management claims  
13 the balance may be steered in favor of corporate raiders,  
14 then correction should be considered within the context  
15 of tender offer regulation, and not corporate governance.

16           The mandate by the Commission of a one share, one  
17 vote standard would not, in NASAA's view, represent an  
18 inappropriate intrusion on state law. Quite to the contrary,  
19 the failure of the Commission to impose a one share, one vote  
20 standard would cause a substantial negative fallout on State  
21 law. While it is true that corporate governance is  
22 traditionally the domain of the states, most states provide  
23 for misinverting rights standards in deference to the  
24 Federal SRO stricter requirements. The same deference is  
25 provided under state securities laws by exempting New York

1 Stock Exchange and AMEX listed securities from securities  
2 registration requirements. Further, there has been a movement  
3 in some states to limit directors liabilities.

4 Notably, Delaware. State laws have not evolved in  
5 a vacuum but rather reflect the strengths of the Federal  
6 regulatory program. Action by the Commission should be viewed  
7 as a necessary evolutionary step in the symbiotic regulatory  
8 relationship that has always existed among the exchanges,  
9 the states and the Commission.

10 Thus, the states' interest would not be adversely  
11 impacted if the Commission were in effect substituted for  
12 the exchanges on the narrow issue of requiring shareholder  
13 voting rights, but rather this would provide for the same  
14 Federal, multi-state balance.

15 The perception of the investing public is crucial.  
16 The markets depend upon investor confidence. Markets which  
17 are perceived as unfair will discourage the average investor.  
18 If there is one thing that investors find comfort in, it is  
19 the understanding that if they buy stock, then they are an  
20 owner of corporate America. Now we are here today discussing  
21 whether or not these investors will be able to retain their  
22 most basic and fundamental right associated with ownership;  
23 whether or not they can hold management accountable.

24 The shareholder right is as American in my opinion  
25 as motherhood and apple pie. This issue, I believe, provides

1 the Commission the opportunity to take your place in  
2 financial history; an opportunity to let the investing  
3 public know that the Commission has championed their basic  
4 right to vote. It is clear that the markets will not be able  
5 to agree among themselves and we believe the Commission  
6 is empowered to so act, pursuant to section 19C of the  
7 Exchange Act.

8 Further, resolution of this issue by the Commission  
9 would be swifter and simpler than waiting for Congressional  
10 action. Your decision regarding whether to prevent a  
11 movement toward corporate apartheid is a critical test of  
12 the Commission's stewardship and oversight responsibilities  
13 over the market place.

14 We fully recognize the enormous responsibilities  
15 you confront. NASAA appreciates the invitation of the  
16 Commission to present its views here today.

17 Thank you very much.

18 CHAIRMAN SHAD: Thank you, Mr. Bell.

19 Now, the questions by the Commissioners or  
20 Senior Staff do not necessarily reflect their positions or  
21 where they're going to come out on these issues, but rather  
22 are intended to elicit more information in your best judgment.

23 How do you respond to those who say that we already  
24 have the highest listing requirements, even if you approve  
25 the New York Stock Exchange's provisions, of anyplace else

1 in the world, and that with the London Stock Exchange now  
2 staying open until 1:00 o'clock, New York Time, which overlaps  
3 the New York Stock Exchange's trading hours, if we don't  
4 make this concession, it'll simply drive more -- and even  
5 with the concession it may over a period of time -- drive  
6 more of the trading activities and listings of securities  
7 offshore, and they'll go to London or other foreign  
8 exchanges.

9 It comes up in the connection with this issue,  
10 but in many other areas of disclosure requirements by the  
11 SEC.

12 Mr. Bell?

13 MR. BELL: Well, let me say that I certainly  
14 appreciate the movement toward internationalization of the  
15 market place, and whereas NASAA as an organization has not  
16 fully developed its positions regarding these issues, I  
17 guess that I would say as my own personal opinion that I really  
18 think that to compromise shareholder democracy for domestic  
19 companies due to pressures caused by internationalization  
20 is a would be in my personal opinion a mistake that we would  
21 feel the adverse repercussions from for many many years to  
22 come.

23 Whether or not this will open up or create pressures  
24 for domestic companies to move offshores, I don't have the  
25 answer to that. I suppose that there is a question as to

1 how you would define a domestic company for the standards  
2 that might be imposed. I don't know if such a definition  
3 would be merely pegged to where they're incorporated or  
4 it would be pegged to where they have their principal offices  
5 and substantial assets located.

6 But I agree that there is definitely a major  
7 consideration before you regarding internationalization.  
8 But we still hold a position that shareholder democracy,  
9 at least for domestic companies, should not be compromised.

10 CHAIRMAN SHAD: Well, you and many others, I would  
11 add, have recommended that the Commission impose an across  
12 the board one share, one vote requirement for securities  
13 traded on all markets in the United States. Would you include  
14 foreign securities. In other words, if its our markets as  
15 you would say, why would you distinguish between foreign  
16 and domestic as to what's to be traded in those markets,  
17 on this voting line issue.

18 MR. BELL: Well, certainly my knowledge as to  
19 foreign securities offerings I'll profess is somewhat  
20 limited. However, I do understand that in some countries  
21 under certain circumstances, the law may very well require  
22 disparate voting rights. I, speaking personally in the  
23 sense that NASAA has not developed a set of exceptions from  
24 the one share, one vote standard, I at least personally  
25 recognize that in a situation where the law requires

1 otherwise, or where perhaps judicial order requires otherwise  
2 as well, to take it a step further, that there may very well  
3 be a need for an exception. But beyond that, I'm not  
4 prepared to concede that foreign issuers should receive  
5 preferential treatment over domestic issuers.

6 CHAIRMAN SHAD: Thank you, Mr. Bell.

7 Commissioner Cox?

8 COMMISSIONER COX: Mr. Bell, in your presentation,  
9 you used the analogy between one vote per share, and you  
10 said basically you said it was as fundamental as apple  
11 pie and motherhood, and I've, in the testimony over the  
12 past two days, I have often heard one vote per share compared  
13 to the political system we have where there is one vote  
14 per citizen of the United States.

15 My question is that while I guess many people like  
16 apple pie, and everyone has a mother, and each citizen of  
17 the United States has a vote on political issues, it seems  
18 that the shareholders got their voting power in a different  
19 way. It wasn't bestowed as a right of birth, but they purchased  
20 the shares and a vote came with them. So, a proposal where  
21 the purchasers of those shares could determine whether they  
22 wanted to retain the vote, do you really view that as basic  
23 the things you considered, or isn't it really different  
24 where if you buy it, you could decide to sell a part of it  
25 or vote it away or for whatever compensation was offered, or

1 is it something that you're really saying the shareholders  
2 shouldn't have the choice because they wouldn't make the  
3 right decision?

4 MR. BELL: I think we're not suggesting the  
5 shareholders maybe would not make the right decision. We  
6 like to think that all shareholders are capable of making  
7 informed decisions, but I guess the reality is is that many  
8 of the investors that we consider our constituents are  
9 certainly not the institutional investors. A number of  
10 them the individual investors, I would characterize as  
11 being marginally sophisticated at best.

12 But that's not to say that they do not exercise  
13 good judgment, and NASAA's position is clearly that we  
14 believe that the standards should be mandated without this  
15 actually being proffered to the investors to make that  
16 decision. If, if, if the shareholders of today are  
17 provided the opportunity to make the decision as to whether  
18 to relinquish their voting rights, well, that's today's  
19 group of shareholders.

20 Tomorrows group of shareholders will be somewhat  
21 different. They perhaps would not have approved of this.  
22 If we suggest or take this a step further that well, why  
23 would they buy it to begin with, well, then I think that  
24 points out another concern that taking away the shareholder  
25 right and the ensuing management accountability to the

1 shareholders through the vote, may actually drive many of  
2 the individual investors away from investing in the market  
3 place.

4 I just think that it's an undesirable development  
5 that certainly transcends many of the other issues that  
6 you and we as an organization as well have grappled with  
7 in recent years. I view this as on a plateau all of its  
8 own.

9 COMMISSIONER COX: Ms. Bender, do you believe that  
10 the shareholders would make incorrect decisions; that they  
11 wouldn't be able to judge what's in their interest?

12 MS. BENDER: No. I think that shareholders when  
13 presented with that decision, would probably make whatever  
14 decision they felt was in their best interests and in many  
15 cases, I would think it would be economic self-interest.  
16 If a sweetener were offered a greater dividend preference  
17 than the shareholders entitled to vote on the issue at that  
18 time might very well chose limited voting stock.

19 The problem as I see it is that that decision  
20 is not a reversible decision, but from that time forward,  
21 there is a real question of management accountability and  
22 the problem of a divorce of the economic interest in the  
23 corporation from the control of the corporation via the  
24 voting process.

25 COMMISSIONER COX: You seem to suggest that the

1 shareholders wouldn't realize that in making their decision  
2 and so it wouldn't be in their best interests.

3 MS. BENDER: Well, in a sense, there is a short  
4 term interest and a long term interest. As a shareholder  
5 presented with the issue on a particular day, if more money  
6 is offered, I'm presuming that many shareholders would vote  
7 to take the money now. Most corporations are on-going  
8 entities and it seems to me that it is a dangerous situation  
9 to have a large number of companies who are one and controlled  
10 exclusively by insiders without the check of shareholder  
11 votes, and possibly without the check of independently  
12 elected directors.

13 COMMISSIONER COX: Thank you.

14 CHAIRMAN SHAD: Commissioner Peters?

15 COMMISSIONER PETERS: Thank you, Mr. Chairman.

16 Ms. Bender your statement in your testimony that  
17 whatever this Commission does in this issue is not going to  
18 be state neutral piques my interest and I'd like to explore  
19 it with you a little bit.

20 Wonder if you would, maybe I shouldn't ask you  
21 if you'd agree before posing the question. It occurs to  
22 me that we could take an action that would preempt state  
23 law and therefore impose a standard on the states about  
24 which they could do nothing regardless of whether they agreed  
25 with it or not. Or we could take action that would require,

1 for example, the State of California to take some affirmative  
2 step to retain or maintain the standard to which it now  
3 adheres. And from your testimony, I gather that it is  
4 in essence a one share one vote standard, albeit it is  
5 tied to listing standards.

6 MS. BENDER: Yes.

7 COMMISSIONER PETERS: To an exchange standard  
8 which requires one share, one vote. Am I correct?

9 MS. BENDER: Well, securities that must seek  
10 a permit from us are required to have a one-class common  
11 stock structure affording one share, one vote.

12 Insofar as the exchanges are concerned, both the  
13 New York and American have exemptions for issuances of  
14 their listed companies, so that there is a one for ten  
15 exemption in effect for the American Stock Exchange,  
16 and a one share one vote exemption currently for the New  
17 York.

18 COMMISSIONER PETERS: Okay. If we voted to  
19 approve the New York Stock Exchange rule proposal, which  
20 would eliminate the one share one vote listing requirement  
21 on the New York Stock Exchange, and California wished to  
22 maintain their presently operative criteria, you could do so,  
23 simply by changing your rule and not tying it to listing  
24 standard, but to an abstract standard established by you.

25 MS. BENDER: As a theoretical matter, we could;

1 as a practical matter, I'm quite certain that California and  
2 each of the other individual states could not. There was a  
3 very spirited battle last year in our legislature in which  
4 the NASD argued vehemently that its national market system  
5 securities ought to be exempt in California as New York and  
6 American Stock Exchange listed companies are.

7 And the argument that really turned the tide in  
8 our state legislature was the voting rights issue and the  
9 fact that the playing field perhaps ought to be leveled but  
10 it ought not be tipped, either. If the New York's voting  
11 rights proposal is adopted, that peg of our argument is  
12 certainly gone, and I think it would be difficult to persuade  
13 many state legislatures that the national market system,  
14 the NASD ought not to have an exemption on the same grounds  
15 as the New York does.

16 COMMISSIONER PETERS: Well, thank you very much.  
17 That indeed clarifies your statement as to why our action  
18 on this particular issue is most definitely not state  
19 neutral. That's very helpful.

20 May I ask Mr. Bell a question, Mr. Chairman?

21 CHAIRMAN SHAD: Sure.

22 COMMISSIONER PETERS: It's a quick one.

23 In your testimony, you pointed to the New York  
24 Stock Exchange as being a leader in the area of setting  
25 high corporate governance standards, and it occurred to me

1 when I read your comments and again when you spoke them here  
2 that its difficult to be a leader if you're not there,  
3 I suppose. In a way, that's the reason why the generals  
4 are in the bunkers and the troops are out in the trenches  
5 when battles are being fought.

6 And so I ask you if you do not lend credence  
7 to the competitive arguments that the New York Stock Exchange  
8 makes, because in essence they are telling us we no longer  
9 control the universe or a significant part of it, and we  
10 will not control it if we do not have this rule change.

11 MR. BELL: I'd lend great credence to their  
12 claims that competitive pressures are driving them to  
13 present a rule proposal that they do not even have the  
14 conviction to strongly support themselves. My comment about  
15 the New York Stock Exchange being a leader, I think historically  
16 it has been recognized and perceived as the market against  
17 which all others have been measured.

18 Our concern is that if New York certainly lowers  
19 its standards here, as you've heard, the AMEX suggest, they  
20 feel that they have to lower their standards even further,  
21 and this will just lead to a round of further reduction in  
22 standards as the exchanges jockey for a favorable competitive  
23 position.

24 We believe that the Commission in its oversight  
25 responsibility is the common denominator among the three

1 market places that can actually draw the bottom line. If  
2 you leave it to the three among themselves to draw the  
3 bottom line, I just have great fear and concern as to where  
4 that bottom line may be.

5 CHAIRMAN SHAD: Thank you, Commissioner Peters,  
6 Commissioner Grundfest?

7 COMMISSIONER GRUNDFEST: Thank you, Chairman.

8 I'd like to address the question initially of  
9 authority. Thank you for your encouragement and your support  
10 and the wise counsel and the suggestion that we have the  
11 authority to go forward with imposing a one share, one vote  
12 rule across all the exchanges. Let me discuss with you a  
13 couple of other rules we might want to adopt.

14 What would you think if we adopted a rule requiring  
15 cumulative voting in each of the exchanges? Would we have  
16 authority to do that?

17 MR. BELL: I'm assuming, Commissioner, that's  
18 directed to myself?

19 COMMISSIONER GRUNDFEST: Either one that would  
20 want to pick it up.

21 MR. BELL: NASAA would have serious and grave  
22 misgivings if the Commission were to undertake to adopt a  
23 full body of corporate law. We do believe that under the  
24 Securities Exchange Act of 1934, particularly with regard  
25 to the proxy solicitation rules and the disclosure requirements

1 within the context of a proxy is there for a very real purpose,  
2 and that is to provide for the investing public who have  
3 the right to vote the ability to vote in an informed fashion.  
4 I think that in Commissioner Tom's statement, that he indicated  
5 that based upon some of the legislative history that the  
6 Congressional intent was that these standards which would  
7 serve shareholder suffrage, and therefore we think that there  
8 is clear precedent and authority on this one single issue.

9 Beyond that, I'm not here suggesting that the  
10 Commission does have the authority.

11 COMMISSIONER GRUNDFEST: But, Mr. Bell, we've heard  
12 so much about how ineffective the voting right appears  
13 to be and anyone that's familiar with the operation of  
14 cumulative voting, knows that it can operate to increase  
15 the power that minority shareholders have. And if you take  
16 seriously the ability of minority shareholders to influence  
17 the outcome of corporate actions, and if you take seriously  
18 some of the criticisms that people have leveled today,  
19 couldn't we make the finding that the small shareholder  
20 needs a larger voice, and therefore we should mandate cumula-  
21 tive voting across all the exchanges?

22 MR. BELL: I see, It's a provocative thought  
23 but we certainly have not gone that far in our reasoning,  
24 nor am I taking such a position at this point. We're  
25 standing by one vote per share.

1           COMMISSIONER GRUNDFEST: Can you think of any  
2 logical distinguishing characteristic that would argue  
3 that we have authority to require one share, one vote across  
4 the exchanges but we could not mandate cumulative voting  
5 on the rationale I just stated?

6           MR. BELL: I'm not prepared to respond to that  
7 Commissioner. Perhaps, Christine?

8           MS. BENDER: It seems to me that one distinction  
9 is that shareholder voting rights have been part of the  
10 listing standards of the exchanges for a considerable period  
11 of time, and that coupled with the long interest of the  
12 Commission and the mandate of the '34 Act and the history  
13 of it indicates to me that shareholder voting in the sense  
14 of one vote per share has been perceived as of significant  
15 importance and being in need of protection for some period  
16 of time.

17           Cumulative voting, while a more serious issue,  
18 strikes me as being just something different as the social  
19 responsibility committees as you suggested might be requested  
20 to judge upon yesterday might be.

21           COMMISSIONER GRUNDFEST: I understand why it strikes  
22 you as something different but would you be able to articulate  
23 something that you'd be willing to write down and have that  
24 stand as the basis upon which to base that distinction?

25           MS. BENDER: Well, I guess among other things,

1 you argue for protection of the minority, which is giving  
2 the minority more voting power than their economic interests  
3 normally would be coupled with. What we have proposed is  
4 to retain one vote per share and not to see common stock-  
5 holders have less voting power than is normally coupled  
6 with their economic interests.

7 COMMISSIONER GRUNDFEST: No further questions.

8 CHAIRMAN SHAD: Thank you, Commissioner Grundfest.  
9 Commissioner Fleischman?

10 COMMISSIONER FLEISCHMAN: Let's take Mr. Grundfest's  
11 question a slightly different aspect. Using your language,  
12 Mr. Bell, the symbiotic relationship of the Federal and  
13 state supervision in the corporate area, which I think is  
14 a very good phrase. It is symbiotic and its been very  
15 healthy and very helpful, mutually helpful over all these  
16 years.

17 Would it be fair to use against you and Ms. Bender  
18 your own phraseology? There will be subsequent NASAA  
19 Commissioners, even a subsequent Commissioner of Corporations  
20 in California who may have different views. If you have  
21 urged upon us, and we have perhaps taken your advice and  
22 laid down some generally uniform rule for all the major  
23 public markets, is there any way that your successors will  
24 ever be able to right that balance again?

25 MR. BELL: Well, I suppose, certainly you are

1 correct that we will have successors and our respective  
2 positions, but I suppose that any position that yourselves  
3 or Congress our ourselves would take is always subject to  
4 second guessing by our successors. We at least the current  
5 membership of NASAA, as currently constituted, have strong  
6 conviction to retention of the standard.

7 If the Exchanges cannot do it among themselves,  
8 then we encourage and support the Commission assuring that  
9 it is accomplished.

10 MS. BENDER: In my view, decisions are always  
11 made at a particular point in time, and at this time, the  
12 history of securities issuance requirements in California  
13 and the history of the views of NASAA on the subject is  
14 and has been that one vote per share is very important.

15 So that while that I suppose could be different  
16 Commissioners and different heads of NASAA could have dif-  
17 ferent views, it would be odd to me to be playing devil's  
18 advocate and taking a view that is not mine and has not  
19 been traditionally the view in California.

20 COMMISSIONER FLEISCHMAN: The view that this could  
21 be done at the Federal level without upsetting the balance  
22 of regulation among the Federal government and the states?

23 MS. BENDER: In this one instance, I think it could  
24 be done, yes.

25 CHAIRMAN SHAD: Thank you, Commissioner Fleischman.

1 Do any of the senior members of the staff have  
2 any comments or questions they'd like to advance?

3 Mr. Davis?

4 MR. DAVIS: Ms. Bender, you've said that the  
5 State of California provides an exemption for corporations  
6 listed on the New York Stock Exchange and also in AMEX?

7 MS. BENDER: Yes.

8 MR. DAVIS: If the New York Stock Exchange  
9 proposal were simply to reduce its standards to that of  
10 the AMEX, would you object to that?

11 MS. BENDER: We wouldn't be particularly happy  
12 about it, but I think given the test of our proposed rule  
13 exemption on the subject, we could not exempt in struggling  
14 with what would be an appropriate standard to impose, we  
15 viewed it as inappropriate to require the NASD to maintain  
16 higher voting rights standards than were currently observed  
17 by an exchange which had been exempt in California for some  
18 15 years.

19 So while it was with some reluctance that we did so,  
20 we proposed a rule that would permit -- and it is currently  
21 a proposed rule, our comment period has closed only at the  
22 end of last month, we proposed a rule that would grant two  
23 national market system issues an exemption if they had no  
24 greater than a ten for one voting disparity.

25 MR. DAVIS: So in other words, as far as you're

1 concerned, there's nothing sacred about one share, one vote?

2 MS. BENDER: I guess in the sense we were faced  
3 with we thought a choice between two existing standards,  
4 and that we really did not see that it would have been fair  
5 to insist that the NASD meet the higher of the two.

6 MR. DAVIS: Thank you.

7 MS. FIENBERG: I'd like to ask Ms. Bender a question.

8 MS. BENDER: Yes?

9 MS. FIENBERG: I'm not clear why California would  
10 have to follow the Commission, should the Commission permit  
11 the New York Stock Exchange rule to go through. Couldn't  
12 California, for example, remove the exemption to the New York  
13 Stock Exchange? Think of analogies to all the state anti-  
14 takeover legislation, much of which doesn't follow the  
15 Williams Act, some of which has been declared unconstitutional  
16 some of which has not.

17 So I'm not clear why what we do here necessarily  
18 will foreclose what can be done by the various states?

19 MS. BENDER: Oh, I hope I was not saying that it  
20 would foreclose what our state legislatures could do. I  
21 think as a practical matter I am recognizing the fact that  
22 many states have granted a New York and American Stock Exchange  
23 exemption which they would be very reluctant under any  
24 circumstances to remove from their state corporate statutes.

25 MS. FIENBERG: But if the issue were important

1 enough for them, they could certainly.

2 MS. BENDER: We would argue very vigorously  
3 in that regard, and did so last summer with respect to  
4 the NASD, yes.

5 CHAIRMAN SHAD: Ms. Bender, Mr. Bell, we appreciate  
6 very much your testimony, and we'll look forward to continue  
7 to work closely together as we have in the past.  
8 And we welcome your further comments.

9 MR. BELL: Thank you.

10 MS. BENDER: Thank you.

11 CHAIRMAN SHAD: The next panel are individual  
12 shareholders.

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13 Ladies and gentlemen, we're delighted you could  
14 be with us today, and let me just briefly mention the ground  
15 rules for the opening statements. We would appreciate it  
16 if you would give us the benefit of your views in a five-  
17 minute opening statement,

18 Please begin by stating your name and any  
19 affiliations. The green light will flash when three minutes  
20 remain, and the yellow when one minute remains, which you  
21 should begin to sum up because when the red light goes on,  
22 we'll have to go on to the next panelist. However, I would  
23 add that the Commissioners and Senior Staff will look forward  
24 to asking you questions concerning your comments, and so  
25 there may be more than adequate time to get your views across.

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It's been suggested that it might be desirable to open with your conclusion and recommendations, and then give the amplification, in case time doesn't permit a more detailed discussion.

We'll proceed in alphabetical order starting with Ms. Evelyn Y. Davis.

TAPE 7

1 STATEMENT OF EVELYN Y. DAVIS, EDITOR, HIGHLIGHTS AND LOW  
2 LIGHTS

3 MS. DAVIS: Evelyn Y. Davis, Editor of Highlights  
4 and Lowlights. Most of you have seen me on some of President  
5 Reagan's press conferences. In trying to take away the  
6 one share, one vote rule from public stockholders, companies  
7 could very well disenfranchise independent owners by trying  
8 to eliminate holders rights to use the proxy statements to  
9 present independent proposals to all owners. AMEX listed  
10 corporations such as the New York Times, the Washington Post  
11 and Giant Foods which I personally have stock, which have  
12 Class A and Class B holders do not have to include such  
13 proposals making second class citizens out of the public  
14 stockholders.

15 When the New York Stock Exchange proposes the  
16 approval of a company's majority of independent directors,  
17 they mean the non-management directors. Frequently,  
18 the so-called independent directors are not independent at  
19 all; they go along with management because they are either  
20 university presidents or professors receiving charitable  
21 contributions from the corporations, lawyers whose firms  
22 receive legal fees; bankers, loans; investment bankers,  
23 underwriting fees; country club buddies or interlocking  
24 directorates, director A is on the Board of Chairman B and  
25 vice versa. What independence, That's a big joke.

1           The two classes of stock does not eliminate green  
2 mail and or raiders. Look at the General Motors case with  
3 the Class E greenmail payments of over 700 million to Ross  
4 Perot, not extended to other shareholders.

5           For more on this and similar situations, read  
6 Highlights and Lowlights. By the way, on December 4th,  
7 I submitted a resolution to General Motors prohibiting  
8 green mail.

9           In addition, it has been shown that companies  
10 which adopt this dual voting system usually suffer substantial  
11 price declines. Panic in our financial markets could very  
12 well happen with insiders benefitting from short selling.  
13 The New York Stock Exchange proposes a simple majority  
14 of owners for approval. Certainly, there should be at  
15 least 75 to 80 percent to be fair, if this deal goes through.

16           When the New York Stock Exchange is worried  
17 about competition from other markets they do have a point.  
18 The best and only solution in my opinion is for the  
19 Commission to make mandatory for all exchanges and over  
20 the counter markets, the one share, one vote system, with  
21 a possible exception of corporations having less than  
22 500 stockholders. Under no circumstances should any  
23 corporation be able to take away the independent owners  
24 right of the use of the proxy statement for insertion of  
25 proper proposals.

1           And I'd like to add in the case of limited partner-  
2 ships that limited partners should get the opportunity to  
3 present proposals; they concurrently do not have, neither  
4 do they have voting rights, neither are limited partnerships  
5 required to have annual meetings, and those people who,  
6 like Boone Pickens whose say that stockholders should give  
7 resolutions and have better voting rights, they should  
8 practice what they preach and start out with their own  
9 and give stockholders the opportunity to have stockholder  
10 proposals that can be worded or that can be structured in  
11 such a way that this is possible.

12           Thank you for having given me the opportunity  
13 to present my views in person. I shall be happy to answer  
14 any questions you may have, and finally I'd like to say  
15 as you see in Highlights and Lowlights on page 18, we really  
16 have to thank General Motors for this because they rightfully  
17 wanted to get rid of Ross Perot. And this is why the rest  
18 of this are maybe stuck with this is because General Motors  
19 wanted to -- they should have fired Ross Perot a long time  
20 ago.

21           CHAIRMAN SHAD: Thank you, Ms. Davis.

22           Lewis Gilbert?  
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## 1 STATEMENT OF LEWIS D. GILBERT, INDIVIDUAL SHAREHOLDER

2 MR. GILBERT: Mr. Chairman, allow me to apologize  
3 for my voice; I'm just getting over a cold. As a shareholder  
4 and often spokesman for other holders at their request,  
5 at annual meetings, I am here today to speak against allowing  
6 the multiple vote in one form or another in corporations  
7 on the New York Stock Exchange.

8 At the time they started to depart from the one  
9 vote one share rule so long in effect, I made my protest  
10 known to A.A. Sommer, in a written communication. Mr. Sommer  
11 as you know was heading the Committee which was studying the  
12 question.

13 I am here today to reiterate my opposition to  
14 the practice I and other holders oppose. Surely, it should  
15 be required of all corporations on exchanges, but this is  
16 certainly the price for the practice of being traded on the  
17 New York Stock Exchange.

18 And I hope that the Commission will require that  
19 at the least, a shareholder vote on the subject be authorized  
20 before it be allowed, and such a vote should not be by the  
21 device known as a written consent which the law of Delaware  
22 allows and which deprives owners of the right to be heard  
23 orally on the issue before the holders.

24 May I in conclusion also call your attention to the  
25 need to require voting rights for the limited partners in

1 corporations traded on the New York Stock Exchange. The  
2 device known as the limited partnership form, rather than  
3 the corporate one, is not in itself objectionable. What  
4 is objectionable is the lack of a requirement that there  
5 must be an annual meeting with voting rights for the limited  
6 partners.

7 If the limited partners have the right to elect  
8 directors to represent their interests, these directors if  
9 need be are in a position to call attention to the issue  
10 in question to the general partners and thus speak on behalf  
11 of their constituents.

12 Thank you, Mr. Chairman, and Commissioners, for  
13 allowing me the opportunity to air our views here today.

14 CHAIRMAN SHAD: Thank you very much, Mr. Gilbert.

15 Franklin is it Gopen?

16 MR. GOPEN: Yes.

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1 STATEMENT OF FRANK B. GOPEN, BROOKLINE, MASSACHUSETTS

2 MR. GOPEN: I'm Frank B. Gopen of Brookline,  
3 Massachusetts, and I've been a concerned, and I might add,  
4 voting stockholder for more than 34 years.

5 I believe that the Securities and Exchange  
6 Commission should live up to its Congressional mandate by  
7 holding all publicly held companies to the one share, one  
8 vote rule. Instead of allowing the stock exchanges to  
9 level the playing field by sinking to the unprotected level  
10 of the National Association of Securities Dealers.

11 I wanted to part from my brief, prepared text  
12 to address a few points that have been raised here in the  
13 last couple of days, which I feel need clarification.  
14 The New York Stock Exchange said that they provide protection  
15 to the stockholders having outside directors. Having served  
16 as both an inside and an outside director, myself, let  
17 me assure you that outside directors serve at the pleasure  
18 of the insiders and that's a hollow protection.

19 It has also been suggested that it is a bit  
20 hypocritical for preferred stock to be traded on the stock  
21 exchanges, which implies no voting rights. That's not exactly  
22 true. Most preferred stocks do have some responsibility going  
23 with them, because if enough dividends are passed, they can  
24 elect directors that have some voice in the governance of  
25 the corporation.

1 I feel that the New York Stock Exchange is taking  
2 too narrow a view. The exchange's sole function is the buying  
3 and selling of stock, and I suggest that you as Commissioners  
4 have a responsibility that goes beyond that to our country.  
5 These major corporations represent more than half the wealth  
6 of this country, and by taking away the voting rights, you're  
7 creating a new class that can rule this country.

8 You're taking away the voice of having some over-  
9 sight over these then self-perpetuating directors. I feel  
10 that we should let more sunshine in. If they want to be  
11 a publicly held company, they should step up and act like  
12 big boys and take the responsibilities that go with it.  
13 They should open themselves to public scrutiny. They should  
14 have cumulative voting.

15 Cumulative voting is one share, one vote, in its  
16 best form. Its one share one vote per director. They should  
17 not have staggered voting for directors and I want to con-  
18 gratulate the commission on its attempt to allow stockholders  
19 who have their stock held in street name or with institutions  
20 or in managed asset accounts to allow companies to get their  
21 names and addresses.

22 But gentlemen and ladies, this system is not working.  
23 I have found examples of companies that I have owned stock  
24 in that couldn't get a quorum even though I know proxies  
25 had been sent in and this system is just too cumbersome and

1 its not working. Corporations should be allowed to solicit  
2 proxies directly from shareholders even if the stock is  
3 in street name.

4 The other point I want to address is the scare tactic  
5 has been presented that if we don't give this to the New  
6 York Stock Exchange, trading will go overseas. Well, if  
7 foreign exchanges want to stick foreigners with a boarded  
8 stock like that, so be it.

9 But the fact remains that half of the securities  
10 trading in the world is in this country because of the fair-  
11 ness and openness of our securities regulatory system.  
12 We should not lower our standards; we should raise them.  
13 We should open all public companies to public scrutiny and  
14 the eligibility of truly outside directors.

15 Thank you.

16 CHAIRMAN SHAD: Thank you, Mr. Gopen.

17 Is it Mr. Reinisch, is that the proper --?

18 MR. REINISCH: Yes, sir.

19 CHAIRMAN SHAD: All right. Hans Reinisch, please.  
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## 1 STATEMENT OF HANS R. REINISCH, INDIVIDUAL SHAREHOLDER

2 MR. REINISCH: Mr. Chairman, Commissioners, I have  
3 with me the latest New York Stock Exchange report which  
4 states that, "by all accounts, we just had our best year  
5 in our 193-year history, with a profit of \$18.2 million,  
6 double the profit over the previous year."

7 How can the New York Stock Exchange then claim  
8 that it is suffering because of competition of other  
9 exchanges with lesser standings? In a democracy, economic  
10 as well as political rights are inalienable and sacred. No  
11 one has the right to deprive shareholders of their voting  
12 rights.

13 The New York Stock Exchange's ill-advised proposal  
14 can only result in the undermining of our capitalist free  
15 enterprise system. Who will decide corporate policy if  
16 shareholders are denied the right to vote. If the New York  
17 Stock Exchange wants to lower its listing standards, by  
18 permitting non-voting shares to be listed, it will be destroying  
19 its own best argument for attracting large quality companies,  
20 namely, that it has higher standards than its smaller  
21 competitors.

22 The SEC should instead be holding public hearings  
23 about green mail, golden parachutes, and poison pills that  
24 are costing investors millions of dollars. Why hold hearings  
25 only to protect the interests of the New York Stock Exchange?

1 Once one listing standard is lowered, other standards are  
2 sure to follow as victims. Before we know it, shareholders  
3 will have no rights whatever.

4 The New York Stock Exchange, in collusion with  
5 incompetent managements, wants to deprive shareholders of  
6 their voting rights, step by step, in order to thwart takeovers.  
7 the one best defense shareholders have against incompetent  
8 managements. Everyone is talking about unfriendly takeovers  
9 when in fact from the shareholder point of view, takeovers  
10 are in effect, friendly, especially if shareholders are  
11 offered 50 to 75 percent more for their stock.

12 It's only entrenched management that generally  
13 considers takeovers as unfriendly. Now, in January 1977,  
14 Chairman Roderick Hill, and the SEC hosted a major issues  
15 conference to which they invited me to represent the  
16 American shareholders. At that conference, one of the main  
17 items of concern was the internationalization of the stock-  
18 market and its impact on the American securities industry.

19 Since foreign listing requirements went much lower  
20 than ours, concern was expressed over how American investors  
21 could be protected. The overwhelming view of the conference  
22 participants was that basically American standards should not  
23 be lowered to further the internationalization of the  
24 world's leading stock markets. Major foreign corporations,  
25 in order to benefit from America's vast capital market and

1 liquidity have therefore raised their standards to ours in  
2 many ways.

3 Should we now lower our standards to accommodate  
4 the New York Stock Exchange?

5 I say, no.

6 CHAIRMAN SHAD: Thank you, Mr. Reinisch.

7 MR. REINISCH: Thank you.

8 CHAIRMAN SHAD: Now, I got out of alphabetical order,  
9 Mr. Hall, would you please?

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1 STATEMENT OF GEORGE E. HALL, INDIVIDUAL SHAREHOLDER

2 MR. HALL: Yes, my name is George Hall, and I  
3 was until recently Senior Vice President Administration and  
4 a Director of SCM Corporation.

5 SCM was taken over about a year ago in an unfriendly  
6 tender offer by an English Company. I'd like to mention  
7 briefly a few things that seem to me to have been passed over  
8 in the discussions yesterday and today.

9 First, a somewhat technical point. The way the  
10 exchange has proposed to proceed with this rule amendment  
11 is to copy out all of one section of the company manual  
12 and add an exception to the end of it setting forth the  
13 limited circumstances under which the provision as to non-  
14 voting common stock, unusual voting provisions and proportionate  
15 voting stock, may be ignored.

16 This has the undesirable effect of incorporating  
17 what is pretty casual language into the rule and also has  
18 the effect of leaving encased in cement, the paragraph dealing  
19 with voting trusts. This is not the approach taken by the  
20 Exchange in the only other Rule 19 proceeding, that in which  
21 a rule dealing with audit committees was added to the company  
22 manual all of a piece.

23 Prior to 1960, when the Exchange decided to end  
24 the use of voting trusts by listed companies, they had  
25 served as a valuable tool used selectively to deal with

1 blockage problems. Why they should be under a cloud now  
2 nobody has as yet explained, and particularly not the Exchange.

3 Second, I think as a general matter, standards for  
4 listing are a poor place for decreeing substantive matters  
5 of corporate law. Their impact is too selective, being based  
6 on contractual concepts and changes after the fact may be  
7 particularly unfair. Listing standards should remain  
8 completely flexible, subject to the exchange being able to  
9 adjust them case by case. They are singularly inappropriate  
10 for across the board treatment by the Commission which would  
11 have to reflect technical differences, market by market.

12 As you know, the main reason that the listing  
13 agreement has been effective against almost all listing  
14 companies in recent years has been the necessity of continually  
15 listing stock options. Under the new tax law if stock options  
16 disappear, we may go back to the situation before the War  
17 in which it may be ten years between listing agreements and  
18 the question about whether the Exchange really has the power  
19 to retroactively change a listing agreement will become a  
20 vital question again.

21 My suggestion is for the Commission to tell the  
22 exchange that while it's not going to decide the limits  
23 of the Commission's legal power to rule on it, the Commission  
24 considers the matter of listing standards inappropriate for  
25 approval or disapproval and suggests that the Exchange do what

1 it would like. That would reserve the whole question for  
2 future action after some experience with the proposal in  
3 action.

4 Third, there's been very little said here about the  
5 relative sanctuary that foreign firms enjoy. As a competitive  
6 matter, we always worried a good deal about the relative  
7 freedom with which our foreign competitors were able to make  
8 long term investments and fundamentally alter the market  
9 place without concern about the short term impact on the  
10 holding of their stock.

11 In fact, two of SCM's large businesses have been  
12 sold by Hansen to English companies with whom we were actually  
13 competitors. As you know, foreigners are not allowed to own  
14 voting stock in many Swiss companies. Bear's shares are  
15 commonly non-voting or practically so in most European  
16 countries, and various government actions are available for  
17 protection.

18 Four, although Mr. Sommer went a long way to  
19 correct it, not enough has been said from the point of view  
20 of the listed companies. It is little wonder to me that  
21 the two exchanges and the NASD yesterday seemed to be so  
22 ambivalent on this whole subject. These rules were adopted  
23 by the governors of the exchange some years ago with no  
24 participation by listed companies, and practically no advance  
25 warning that they were to be adopted.

1           Only when the governors were considering some vague  
2 language which would have struck down defensive tactics  
3 in general, did enough hue and cry arise to cause the governors  
4 to back off, and even then, we got the language which now  
5 appears presently in the company's manual.

6           The exchanges are essentially bystanders. I'm  
7 certain that a mild paranoia limits listed companies speaking  
8 out. We were told many times, better not become too visible.  
9 I hope that no one draws the wrong conclusion from the  
10 relative silence in this hearing room. Finally, many witnesses  
11 have begun with the assumption that the interests of management  
12 and shareholders diverge.

13           Even Professor Fischel, for most of whose writings  
14 my admiration is unbounded, suggests that agency costs, by  
15 which I guess he means management inefficiency, are a source  
16 of conflict. I doubt that. I think that the interests may  
17 in fact diverge with the shareholder as a short term share-  
18 holder, but where the shareholders are in for a reasonable  
19 term, I assume that most of them have bought the stock because  
20 they have confidence in management based on its record and  
21 on their estimate that its performance will continue.

22           By a reasonable term, I mean the sort of time that's  
23 required to reduce a technology to practice, to start up  
24 a complicated plant, or to repair a business hit by foreign  
25 competition and by changes in its business environment. Most

1 managers I have known measure their success, and as you  
2 know, they are all very success driven, in exactly the same  
3 terms as common shareholders.

4 The price of the stock, the earnings progression,  
5 the stream of successful new products, the ability to handle  
6 problems thrown in their path, and with substantial number  
7 of employee shareholders, they are reminded of this at every  
8 employee meeting. One of the most important tasks management  
9 has is to provide capital for the needs of the business on  
10 terms most favorable to common shareholders.

11 That makes this discussion which assumes a war  
12 between management and shareholders somewhat unreal. I don't  
13 know how widespread two-class stock will become, but I doubt  
14 that the interests of present shareholders will be successfully  
15 ignored. The cost would be too high in pure economic terms.

16 Thank you.

17 CHAIRMAN SHAD: Thank you, Mr. Hall.

18 Mr. Stewart?  
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1 STATEMENT OF MACO STEWART, INDIVIDUAL SHAREHOLDER

2 MR. STEWART: Maco Stewart, Huston, Texas, a  
3 former Chief Executive Officer of Stewart Information  
4 Services and Stewart Petroleum.

5 Mr. Chairman, to address your question first on  
6 your poll you've given others, I'm in favor of one share,  
7 one vote, with the only exception as mentioned earlier about  
8 the Canadian exception where you would provide a limited  
9 period of time for the founders with sunset and nontrans-  
10 ferability of that right.

11 Because, two reasons: number one, basically it  
12 is an inalienable right. Commissioner Cox bringing up the  
13 point about the future and the accountability and if you want  
14 to say that a person has a right to sell his vote and the  
15 free market can design, well, it's somewhat like I don't  
16 have the right to sell my vote in a political context.

17 Nor my right as a juror, my right to decide, is  
18 part of the fundamental part of free enterprise, is the  
19 idea of accountability and responsibility, and we cannot  
20 give away the right to future shareholders.

21 It's been challenged here, your right as a  
22 Commission, by what right do you have to decide whether it  
23 should be one share, one vote, or what right have you got  
24 to say anything about these takeover battles that underlie  
25 this whole thing? Well, and it says, a quotation here,

1 "national emergencies are precipitated, intensified and  
2 prolonged by manipulation and sudden unreasonable fluctuations  
3 of security prices and by excessive speculation." That's  
4 not tomorrow's headline. That's the text of the 1934  
5 Securities Act that empowers you and charges you with your  
6 duties.

7 I'd further remark to you that the language in  
8 the 1934 Securities Act, for example, in U.S.C.A. 15J,  
9 Transactions in securities are effective with the national  
10 public interest, to provide for regulation and control to  
11 ensure the maintenance of fair and honest markets. So it's  
12 your job without any limitation was given to you by Congress  
13 at a similar period in history when this low public confidence  
14 in stockholding.

15 And that job is to ensure fair and honest securities  
16 transactions. By the rules and regulations, the Commission  
17 may prescribe for the protection of investors. I'm just  
18 quoting from the Statute, Section 15.78(j). It shall be  
19 unlawful for any person to employ any contrivance in contra-  
20 vention of such rules and regulation as the Commission may  
21 prescribe for the protection of investors.

22 This job was given to you as a real sacred duty  
23 on the behalf of the free markets of the world. Without  
24 any limitations, there's no remarks about laying down, about  
25 getting along with state laws or courts or whatever the things

1 say about charters. That was the charge and the duty that  
2 was given to you by Congress. That's why you have the duty  
3 to decide what are the fundamental rights of stockholders.

4 That's why you have the duty in these takeover  
5 things which are unplanned to decide what is fair and  
6 honest in a securities transaction. If you can decide, like  
7 anyone in this room would, that green mail is not a fair  
8 and honest securities transaction, that all stockholders  
9 are not treated equally, your job under the statute of 1934  
10 is to say, no, no green mail.

11 If you decide that two-tier tender offers are  
12 unfair, and I think they are, you say, no, that is an unfair  
13 securities practice; it is not fair and honest. And that's  
14 your job, and that's what the securities owners, the  
15 individual stockholders are looking for.

16 I want to congratulate you for calling this to  
17 your attention because you're waking up to your duties, as  
18 you are waking up to your duties when it comes to insider  
19 trading. I would mention this on insider trading to you, too.  
20 You just tipped a little bit of the iceberg, here. The  
21 iceberg also includes the financing partners.

22 The financing partners are the people who buy the  
23 junk bonds. They are the institutional investors. What does  
24 that man who makes a commitment for junk bonds do? Who does  
25 he tell? He's the first person told on an insider trade.

1 They can't go forward. Boone Pickens' guys can't go forward  
2 without that commitment or without a bank loan. Those people,  
3 you should check into them.

4 Now, it's not going to be what they put in their  
5 own pocket. They're probably not even trading from their  
6 own account or their own institution. Institution A tells  
7 institution B, I think Phillips is a good stock. I think  
8 goodyear's a good stock. That's the type of thing you're  
9 going to have to track down on. Track down on when the  
10 date of their junk bond commitment was made, when that loan  
11 commitment was made, and what other institutions bought on  
12 that same day, and you'll get to the bottom of the big ice-  
13 berg.

14 So I would recommend to you in conclusion two  
15 things: number one, let's get this playing field leveled.  
16 Let's get rid of the tax subsidy for junk bonds and debt  
17 takeover financing and you'll stop a lot of this where  
18 America is going down the tubes, where we're replacing  
19 equity with debt, \$90 billion a year.

20 So I would say to you, if you take away that ad-  
21 vantage of the raiders, then you have an even playing field  
22 with no green mail, with equal rights. Every stockholder  
23 treated equally. You can lay down equal, honest fair  
24 trading practices for securities and restore confidence.

25 Thank you.

1 CHAIRMAN SHAD: Thank you, Mr. Stewart.

2 I would like to make an observation on Mr. Gopen's  
3 comment. You said that the United States has half of the  
4 trading in securities and I used to think that as well. I  
5 only recently learned that based on the total volume of  
6 trading security transactions throughout the world, we are  
7 now at 38 percent and Japan is at 33 percent, and so when  
8 we ask these questions about the increasing internationalization  
9 of the markets, our dominance is not nearly what it was a  
10 few years ago.

11 I would like to ask this panel by a show of hands  
12 to react to a question I've asked of others. And that is  
13 whether or not, assuming that the Commission has the  
14 authority and were to require across the board one share, p  
15 one vote on all markets, to what extent would you be willing  
16 to grant exemptions or exceptions from that rule, including  
17 grandfathering all those companies that already have A,B  
18 capitalizations, and including permitting companies to  
19 do public offerings of non-voting stock, if the people are  
20 willing to buy them, there's a price at which they would be  
21 not to force a recapitalization on those that don't want  
22 a recapitalization but rather to permit companies to be  
23 able to raise equity capital through a non-voting security,  
24 as well as in taking over other companies, through not again  
25 to exchange out their own shareholders, but if they were making

1 an exchange offer for another company and didn't want to end  
2 up with the other company's shareholders ending up with  
3 control of the acquiring company, where they might offer  
4 a package of securities which would include a non-voting  
5 stock.

6 How many of you would go along with the basic  
7 proposition of one share one vote across the board but with  
8 the exceptions I've just mentioned? Would any of you?

9 MR. GOPEN: I would with a little different exception.  
10 Because I feel there's an issue here that we're sort of  
11 overlooking. I agree with you that if a company -- you didn't  
12 state an opinion, but you've mentioned the possibility that  
13 if a company had originally gone public with a split capitaliza-  
14 tion and people went into it ab initio knowing that, that's  
15 one thing.

16 If a company subsequently had it submitted to a  
17 vote, due to the unfairnesses in the voting which I have  
18 mentioned, I feel that in all fairness, that should be re-  
19 submitted to a vote. I feel that privately held companies  
20 which are not publicly traded need not necessarily apply  
21 to that, but what my biggest objection is, the fundamental  
22 concept here of saddling future generations with stock which  
23 provides the working capital of these companies without any  
24 accountability without any voter control, and I don't think  
25 that's any favor to our children and grand children.

1 CHAIRMAN SHAD: Well, time doesn't permit me  
 2 to poll each of you, so are there any of you that would  
 3 support one share one vote across the board with the  
 4 exceptions that I just mentioned?

5 MS. DAVIS: Yes,

6 CHAIRMAN SHAD: Evelyn, I'm sorry, I can't have  
 7 a comment, because I've got to let all the other Commissioners  
 8 get up, but they'll undoubtedly get to you. Anyone else  
 9 that would support it?

10 MR. GILBERT: The grandfather clause part but not  
 11 the rest.

12 CHAIRMAN SHAD: All right. That's it? All the  
 13 rest of you want it across the board with no exceptions,  
 14 I take it?

15 MS. DAVIS: Except the --

16 MR. HALL: No, no, no, I don't think that there  
 17 ought to be any regulation across the board at all.

18 CHAIRMAN SHAD: I'm sorry. I heard your comments  
 19 Mr. Hall, you're right. Yeah, you said to tell the New York  
 20 Stock Exchange to do whatever they thought was appropriate.

21 MR. HALL: Yes. Exactly.

22 CHAIRMAN SHAD: Yeah. Commissioner Cox?

23 COMMISSIONER COX: I have a question for Mr. Hall.

24 Aside from Professor Mikkelson yesterday, Mr. Mueller  
 25 this morning, all of the people who have spoken in favor of

1 approving the New York Stock Exchange proposal have tied it  
2. someway or another as a defensive mechanism for tender  
3 offers. And I noticed that you have spoken in favor of  
4 the proposal; you've mentioned your experience with a  
5 tender offer but you went a lot further and talked about  
6 other aspects.

7 But do you mainly see this the whole issue of  
8 the proposal, kind of the push for it and the fact that it  
9 is now an issue rather than being an issue five years ago,  
10 or ten years ago as far as the stock exchange listing standards,  
11 as being driven by takeovers, and really being a takeover  
12 issue, as opposed to a desire to recapitalize companies  
13 or provide more flexibility in raising capital? Are we  
14 really talking about tender offers?

15 And in a slightly different form?

16 MR. HALL: I understand from what I've been reading  
17 and from what I've heard the last two days, that the drive  
18 is the tangible, that the Exchange has had a lot of contact  
19 from people who want to get rid of the rule for that reason.

20 My own feeling is, and I've thought a lot about  
21 it obviously you know the last couple of years before we  
22 got taken over and after we got taken over, is that it isn't  
23 going to make that much difference in takeovers. Even Figgie  
24 is probably, that's I don't want to make any predictions, but  
25 I'm saying that somebody making an all-cash, any and all

1 stock tender offer like they did for us, it can probably  
2 have Figgie if the price is high enough. And they may not  
3 get the 7.9 percent that the family owns, but they'll get  
4 the other 92 or what have you. So I don't think anybody  
5 realistically can say that if the Exchange abolishes this  
6 rule tomorrow, that companies are going to be able to put  
7 themselves in a severely protected position.

8 I just don't see how it'll work. First, it seems  
9 to me you've got a lot of trouble getting a shareholder vote  
10 to do it. I think anybody that canvasses their shareholders  
11 today are going to find a lot of people who were here at this  
12 panel this morning who are going to vote against it.

13 Secondly, I think there's a certain amount of  
14 embarrassment for management to go to its shareholders and  
15 say we'd like to disenfranchise a bunch of you for an extra  
16 five cents a share dividends or something. And I think a  
17 lot of directors are going to be too embarrassed to sign a  
18 document for that kind of request.

19 What I really, what I have been concerned about for  
20 a long time is that in the 50s, we dealt with this blockage  
21 problem rather well, using voting trusts and preferred stock,  
22 and so forth. And yet, here the other day, when Texaco  
23 was trying to buy out Bass Brothers, so they can go ahead with  
24 their Getty acquisition, Bass Brothers wants a voting  
25 preferred stock because they get the 85 percent dividend to

1 receive credit on. And Texaco proposes a voting preferred  
2 but give us the vote, as a voting trust with the management  
3 voting the stock, perfectly consistent with the standstill  
4 agreement that they made with the Bass Brothers when they  
5 bought them out, but almost ten percent of the stock, and  
6 the premium was only three percent over the market so it  
7 was a fairly straightforward deal.

8 That seems to me like a fairly legitimate thing  
9 companies ought to be able to do and I'm sure when that  
10 hit the stock exchange it must have caused a lot of trouble,  
11 and in the end in order to avoid a TRO, they had to get rid  
12 of the voting trust and they ended up agreeing they would  
13 vote the preferred pro rata just like the common voted,  
14 in order to settle the derivative action it would have brought.

15 But it still seemed to me like a very reasonable  
16 thing that managers ought to be able to do, and yet under  
17 the stock exchange rules since 1960, they have not been able  
18 to do, and under the new rule that the Exchange is proposing,  
19 they won't be able to use voting trusts; they've got to  
20 create some fancy kind of rinky dink capitalization to do  
21 it.

22 That's the thing. I doubt, even though everybody  
23 says, you know, this is going to be great for tender offers  
24 and all that, I doubt it, practically speaking. It just  
25 can't, I mean, that's why I think everybody here has been

1 erecting this huge strawman. We're going to disenfranchise  
2 all these poor stockholders. I think that's very very  
3 unlikely. And I could be proven wrong, and if I am, then  
4 I think the Exchange has all the authority in the world  
5 under 19C to go straighten it out. -- I mean, the Commission  
6 does, but I'd like to give an opportunity for more creative  
7 kinds of capitalization a chance to see the light of day  
8 here.

9 And since we're probably going to go back to mergers  
10 for stock rather than cash, the blockage problem is going  
11 to be a very real problem for mergers and acquisitions shortly  
12 and it seems to me a fairly reasonable thing to do, and that's  
13 why I support it.

14 But you don't understand how prejudice I am because  
15 I just got taken over.

16 COMMISSIONER COX: Okay, thank you. Yeah, I  
17 understand that --

18 MR. HALL: I do not think takeovers are a good  
19 thing.

20 COMMISSIONER COX: Yes, that's why I asked you  
21 the question, thank you.

22 MR. HALL: Okay.

23 CHAIRMAN SHAD: By way of amplification, I wonder  
24 if I could ask Director Quinn on the Figgie reference to  
25 an all-cash, would he be able to defeat it or not?

1 MS. QUINN: My understanding, and this is from  
2 several years ago when Figgie put this proposal forward,  
3 was that although there was a limitation on the number of  
4 votes you could cast on the common stock, the voting power  
5 of the Figgie family held shares would not be limited by  
6 the ten percent, so that even if you got all the shares  
7 other than the Figgie shares, you would not have the majority  
8 voting power.

9 MR. HALL: That would be, and if you tried to do  
10 a short form merger in Delaware after you acquired 92 percent  
11 of the stock, it would be nice. It's a tough question.

12 MS. QUINN: I think a short form merger has to  
13 go through the Board of Directors and so long as you controlled  
14 the Board, --

15 MR. HALL: Touche. Okay, I take it back, I take  
16 it back.

17 CHAIRMAN SHAD: Commissioner Peters?

18 COMMISSIONER PETERS: Thank you, Mr. Chairman.

19 I was interested to note that both Mr. Gopen  
20 and Mr. Reinisch while arguing for very ardently for an  
21 across the board imposition of one share, one vote in all  
22 of our markets here in the United States were equally as  
23 definite in that no exceptions to that standard should be  
24 made in order to facilitate the internationalization process.  
25 As I understand Mr. Gopen and Mr. Reinisch, or did I

1 misunderstand you, Mr. Gopen?

2 MR. GOPEN: Well, I didn't imply that that was my  
3 only purpose, my purpose being to open up the board room,  
4 to minority opinion, if you will, so that a company, its  
5 chief executive is not necessarily surrounded by yes men.  
6 If there are interested people, I feel that cumulative  
7 voting for example would be an excellent way of accomplishing  
8 that.

9 Because you have your one share, one vote, and  
10 that you can let some light in there; let stockholders have  
11 access to what's going on in the company and increase the  
12 amount of accountability. The greatest danger here is that  
13 this is irrevocable. Once they get this nonvoting stock,  
14 there's no provision to vote to repeal that.

15 COMMISSIONER PETERS: I think, Mr. Gopen, where  
16 I was going, I thought I heard you indicate that you would  
17 not permit the New York Stock Exchange for example to have  
18 a different listing standard for foreign issued stock?

19 MR. GOPEN: No, no, no. If a foreign government,  
20 obviously, --

21 COMMISSIONER PETERS: Foreign issuer.

22 MR. GOPEN: -- if a foreign government has laws  
23 that prevent that, we can't dictate to a foreign government  
24 what their laws should be, and I understand that. But that  
25 does not mean that we in turn have to lower our standards to

1 theirs.

2 COMMISSIONER PETERS: Well, how do we permit  
3 companies -- then we would not permit companies organized under  
4 a foreign law to list shares in American markets and sell  
5 those shares to American shareholders?

6 I think that's where Mr. Reinisch comes out and I  
7 was trying, and I thought that that's where you were, Mr.  
8 Gopen.

9 Mr. Reinisch?

10 MR. REINISCH: If I may comment on that. At that  
11 major issues conference that was attended by some 75 of the  
12 nation's leading business executives lawyers and former  
13 SEC commissioners and myself as a shareholder spokesman, the  
14 point was made that many major foreign corporations have the  
15 desire to raise their levels to the American standards in  
16 order to be able to be listed on the New York Stock Exchange  
17 such as having auditing committees, having quarterly reports  
18 and annual reports, that meet our standards.

19 And we have seen more and more foreign companies  
20 only too willing, like Unilev, Royal Dutch Shell, and Honda,  
21 to be listed on the big board in order to benefit from the  
22 capital market system here. And why should we at this point  
23 lower our standards to accommodate American companies who  
24 are afraid of takeovers and then want to deprive us for that  
25 reason of our voting rights?

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1                   COMMISSIONER PETERS:  Would you be comfortable  
2 if we maintained two different standards that we have a  
3 standard requires one share one vote for American companies  
4 but recognizing that the laws and or customs in outside of  
5 the United States would be different that we would permit  
6 national market places our exchanges to list shares without  
7 voting rights and have them traded in our markets if they  
8 were issued by foreign companies?

9                   MR. REINISCH:  I would not only be uncomfortable,  
10 I would want to prohibit foreign companies who do not have  
11 voting rights to be listed on our exchanges.  I mean, that  
12 would put our companies at a decided disadvantage, and  
13 I think it was the collective experience and viewpoint of  
14 the people at the 1977 conference that foreign companies  
15 would be only too happy to abide or to accede to our listing  
16 requirements in order to get the benefit of being listed here.

17                   Of course, by the same standards, I think several  
18 hundred American companies are listed on the relatively  
19 small Amsterdam Stock Exchange so I think that internationally  
20 companies and stock exchanges are just as willing to rise  
21 to our level, in fact, a number of years ago, I spoke exten-  
22 sively with the Chairman of the London Stock Exchange, Sir.  
23 Nicholas Goodeson, and when I explained to him the SEC  
24 procedure, because I testified extensively throughout the  
25 1970s before the SEC on the negotiated commissions, he was

1 highly in favor of getting a commission in England similar  
2 to the SEC. And indicated that in England they would like  
3 to rise to our level, rather than to have us come down to  
4 their level.

5 COMMISSIONER PETERS: They haven't gotten it, yet,  
6 but --

7 MR. REINISCH: Well, they're heading in that  
8 direction.

9 COMMISSIONER PETERS: Mr. Chairman, I'll pursue  
10 this later, if there's any time remaining. Thank you.

11 CHAIRMAN SHAD: Commissioner Grundfest?

12 COMMISSIONER GRUNDFEST: Thank you, Chairman.

13 I'd like to explore for a minute what some of  
14 the consequences might be if we adopt the proposal to go  
15 to a one share, one vote standard, and to have no exceptions  
16 to that standard.

17 I'm reliably informed but I do not have personal  
18 knowledge of the corporation law of West Germany. And  
19 apparently, under that law, if you have common stock under  
20 that law, it has to have a vote. They have a one share,  
21 one vote rule. The existence of that one share, one vote  
22 rule has however, given rise to the invention of a new form  
23 of instrument. It's called the participation right.

24 A participation right looks like common stock,  
25 walks like common stock, talks like common stock, but it

1 hasn't got a voting right. All right, it looks a heck of  
2 a lot like non-voting common. But it's not recorded on the  
3 books or anything else. It's a participation right. You  
4 have a right to participate *pare posu*, with these voting  
5 shares, but you just don't get to vote. That's all.

6 In the United States, in private transactions,  
7 in compensation arrangements, you find things like stock  
8 appreciation rights that already exist for a variety of  
9 reasons, and no votes associated with them, and it wouldn't  
10 be inconceivable that if we were to adopt a one share, one  
11 vote rule the great minds of Wall Street or wherever will  
12 look very quickly to the already existing notion of a stock  
13 appreciation right, or to the German type of participation  
14 right, and will say, fine, we have something new, we have  
15 something different. It's not common stock; doesn't have  
16 any of the characteristics of common stock. Its payout is  
17 related to the value of the common stock, yes, but that  
18 doesn't make it common stock.

19 And we're going to want to list these interests  
20 in one form or another and trade them publicly.

21 Any reactions from the panel to that? What do we  
22 do with that?

23 MS. DAVIS: I think that sounds to me like a junk bond,  
24 rather than a common stock. Absolute no, no, no.

25 MR. GILBERT: On the issue which you've just raised,

1 I'd like to read into the record from the Wall Street Journal  
2 of November the 11th, on this very question of the dangers  
3 of non-voting stock abroad.

4 "Sandoz, which was that chemical company that  
5 had a problem, shares have fallen about 16 percent in value  
6 on the Zurich Stock Exchange, since the leak occurred and  
7 the shares of other Swiss chemical and pharmaceutical  
8 companies also have been effected. The share price drop  
9 was particularly sharp yesterday when non-voting Sandoz  
10 shares plummeted the equivalent of \$106 a share or ten  
11 percent to 8.71."

12 COMMISSIONER GRUNDFEST: Union Carbide had a problem  
13 and their voting shares declined by more than ten percent.

14 MR. GOPEN: You raised an interesting question  
15 about the stock appreciation rights, and I believe that there  
16 is something seriously wrong there, because we're motivating  
17 our corporate executives the wrong way.

18 You talk about international and foreign competition.  
19 The American corporate executive has compensation geared  
20 to short term, quarter to quarter results. Earlier this  
21 year I was in the orient in Japan and in Hong Kong, and over  
22 there they're taking a different approach. They're taking a  
23 five-year approach. They're taking a longer term approach.

24 And this stock appreciation right mentality gearing  
25 it to what they can kick the stock up to in short term is

1 not really beneficial to the stockholder. They don't have  
2 an involvement in the company. Their only involvement, if  
3 you will, is to manipulate the price of that stock.

4 COMMISSIONER GRUNDFEST: The point of my example is  
5 to provoke you with the idea that perhaps adopting the rule  
6 of one share, one vote is a corporate equivalent of an  
7 Maginot line, that it will be very easy for people to say,  
8 hey, that's a great rule. I can run around it to the east,  
9 and I can run around it to the west, and in fact we've  
10 already done that here in a private context in the U.S.

11 And I can trade publicly on that basis, and I  
12 can look at West Germany where it's being done all the time.

13 Are you drawing a line in the sand and thereby  
14 potentially avoiding a real problem?

15 MR. GOPEN: Commissioner Grundfest, I would suggest  
16 that using that same analogy, that the Maginot line that  
17 you're creating is putting this Maginot line between the  
18 shareholder who provides the working capital of the company  
19 and the management being responsible to those shareholders  
20 and I think that that's more detrimental and more harmful  
21 than this transitory device that may be used right now,  
22 and this separating of corporate executives from accountabil-  
23 ity to the owners in the long run is going to be a very  
24 serious problem in this country.

25 MR. GILBERT: Commissioner Grundfest raised a very

1 interesting point on cumulative voting. Which as you know  
2 I strongly believe should be mandatory in all corporations.  
3 But, if we have the rule which they would like to adopt  
4 at the Stock Exchange, I'm now quoting from what I did  
5 at one of the companies, General Cinema, which had adopted  
6 one of these things which we're talking about. And I said,  
7 "you need cumulative voting to balance what you've just  
8 done for the other stockholders. I assure you that unless  
9 the Commission rules, assuming that's the way you would feel,  
10 that then you must have cumulative voting.

11 MR. STEWART: Commissioner Grundfest, to answer  
12 your question specifically, in the 1934 Act in Section 15.78J,  
13 it says very clearly, it shall be unlawful for any person  
14 to use or employ any manipulative or contrivance in  
15 contravention of such rules as the Commission shall prescribe.

16 If you make the rule, that they are going to have  
17 one share, one vote, this is clearly a contrivance to avoid  
18 your rule, and they go directly to jail.

19 COMMISSIONER GRUNDFEST: I would suggest that  
20 perhaps we sit down at some point and read the Supreme  
21 Court's decision in Santa Fe v. Green with regard to the  
22 meaning of that particular language and the legislative  
23 history behind it and the extent to which it can and cannot  
24 be read literally by its terms.

25 MR. STEWART: Well, if that's true, then you should

1 ask Congress to that's where you ask Congress to get it  
2 straightened out for you.

3 COMMISSIONER GRUNDFEST: Senator Metzenbaum was  
4 here yesterday, --

5 MR. STEWART: Said he'd do it?

6 COMMISSIONER GRUNDFEST: Just down the block, yeah.  
7 We know where to find him.

8 MR. REINISCH: Commissioner Grundfest, just one  
9 quick comment. I'm not a military tactician, but I don't  
10 think one should equate giving all shareholders one vote  
11 is necessarily drawing a maginot line. I would think that  
12 if we had a concerned SEC, that is willing to hold not only  
13 hearings when the New York Stock Exchange is in trouble but  
14 when the nation's investors cry out for help in matters like  
15 green mail and golden parachutes, that if the SEC holds timely  
16 hearings, in matters that are of great concern to individual  
17 investors and not just the New York Stock Exchange, then  
18 perhaps we can get parachutes that are going to drop on  
19 behalf of shareholders behind any maginot line.

20 CHAIRMAN SHAD: The Commission has held extensive  
21 hearings through an advisory committee on tender offers,  
22 that were public and took testimony from a wide variety  
23 of sources, so it isn't as if it isn't a matter that is  
24 of concern to the Commission. It is, and has been, and  
25 we have solicited public comment.

1 Now, most of the things that you've been suggesting  
2 do require legislation and we don't have unlimited authority.

3 Let's go on to Commissioner Fleischman.

4 COMMISSIONER FLEISCHMAN: Thank you, Mr. Chairman.

5 The panel has given the Commission some commendations.  
6 In your testimony, I think we ought to commend you. You are  
7 among the people who have sat here, you as individuals, from  
8 the beginning of the day yesterday, until the end of the  
9 day today. My hat is off to you.

10 Mr. Hall, you characterized the appropriate role  
11 of the Exchange as a bystander in this process. You also  
12 suggested that the Commission would do well simply to look  
13 away, and let the Exchange do what it will. With two  
14 bystanders in the process as that would result, it seems  
15 to me that you are suggesting to us the ultimate decision  
16 the only decision on this matter should be in the hands  
17 of corporate management.

18 And I think you responded, not directly to a question  
19 but along the lines of corporate accountability, that the  
20 costs of nonaccountability would be too high in pure  
21 economic terms.

22 MR. HALL: Yeah, I -- a couple of things, one I  
23 would like the Exchange to quit being a bystander. And it  
24 seems to me that they come in here and dump this in your lap  
25 and say, well, we don't really like it but here's this thing

1 we're being forced to do. What do you think. Is a strange  
2 way of proceeding, and it seems to me if the Commission were  
3 to say to the Exchange, you know, we're not going to tell you  
4 what your listing standards are and how many shareholders they  
5 ought to have out; how much capital they ought to have out  
6 and what to do about this very very tough section in there  
7 that deals with control.

8 They will list securities that have a control block  
9 under certain circumstances not completely specified but  
10 having something to do about how long its going to exist and  
11 so forth. All of these things are things that the Exchange  
12 has been wrestling with over a long period of years.

13 Now, suddenly, they come in and they take a piece,  
14 a page out of the company's manual which is largely and  
15 advertising document, and they say, this is a rule, right,  
16 and we're going to amend this rule by adding another paragraph,  
17 and then tell us, even though we're not too enthusiastic,  
18 tell us we should do it. And it seems to me that's a strange  
19 thing, and so, yeah, I think they're bystanders, but I  
20 don't think they ought to be bystanders. I think they ought  
21 to fish or cut bait on it.

22 But over a long period of time, except for a brief  
23 period in the 70s when the Exchange wanted to double the  
24 listing fees and the maintenance fees because they needed  
25 money from the issuers, the listed companies, the listed

6  
1 companies have always been last on the Exchange's list  
2 of priorities.

3 COMMISSIONER FLEISCHMAN: Yes. But assuming they  
4 do cut bait, as you suggest they should, and that we in  
5 a sense cut bait as well, --

6 MR. HALL: Yes.

7 COMMISSIONER FLEISCHMAN: The locus of decision-  
8 making on all this goes back to corporate management's  
9 whatever they want to do?

10 MR. HALL: Yes, but we have another, a couple of  
11 other considerations. One of them is that whatever corporate  
12 management does has to stand the light of day in the courts  
13 in Delaware, New York, or whatever, and it seems to me that  
14 there's a whole lot more protection there than people are  
15 willing to admit. And it seems to me the protection is  
16 enormous and has gotten a whole lot heavier in the last few  
17 years.

18 And for things that are unfair it seems to me  
19 you've got a remedy without too much trouble and those remedies  
20 are being dished out everyday. And I think that again,  
21 everybody posits this war between entrenched management on  
22 the one hand, and the shareholders on the other. I don't  
23 believe that.

24 I think that management is very fond of their  
25 shareholders, that they tend to base their own rewards on

1 rewards that would be approved by the shareholders, that is  
2 increase in the value of the stock over a long period of time,  
3 and we were using three- and five-year periods, too. None  
4 of this quarter to quarter stuff.

5 And all of those things have a big impact on  
6 what managers do. I mean, that's what the economic system  
7 is all about. And what we have here is an artificial re-  
8 straint imposed by the Exchange for I think public relations  
9 purposes about 1960. They're proposing now to remove that  
10 restraint and it suddenly becomes a big cause celeb. And  
11 I'm a little puzzled about why.

12 It's like the Chinese finger puzzle, you know,  
13 you put your finger in easily, but you can't get it out again,  
14 that's true of the way the listing applications work.  
15 So I think they ought to be brought back from being a bystander,  
16 that's my position.

17 Did I answer your question? I may have just passed  
18 by it.

19 COMMISSIONER FLEISCHMAN: Yes.

20 CHAIRMAN SHAD: Thank you Commissioner Fleischman.

21 Now, let's go to the Staff. Director Quinn?

22 MS. QUINN: Mr. Hall, just to go back to some  
23 of the things you were concerned about in terms of the need  
24 for the flexibility of different voting stocks, and you  
25 talked about being able to compete with foreign issuers.

1           And I wasn't quite clear about the basis of the  
2 competition because I thought you were talking about  
3 antitrust issues but I may have misunderstood you.

4           MR. HALL: It's a little murky but the point that  
5 I was trying to make is that companies like our European  
6 competitors, who have nothing to worry about producing  
7 short term results to their shareholders, compete in a  
8 vastly different way than we do.

9           Now, this may not have anything to do with the  
10 proposal before the Commission at the moment. It may have  
11 more to do with the climate and the takeovers and the short  
12 term results orientation and so forth. But in Brazil, our  
13 German competitors competing with us in Brazil have a 20-year  
14 time frame. We find it a little hard to look at more  
15 than about three years. We carried a loss down there for  
16 the last six or seven.

17           And everybody's very very uncomfortable about it.  
18 Now, I don't think that ICI who now owns the business is  
19 at all uncomfortable about it. It gives them a vastly  
20 different time route. Now, that's a fairly attenuated  
21 point, I have to agree, but it's something you feel real  
22 when you're wrestling with these problems.

23           MR. REINISCH: I'd like to make a comment on that.

24           A lot of talk has been heard over the last two  
25 days about short term performance, pressures placed upon

1 American management. I think much of that is due to our  
2 tax laws in that every three months we hear about institutional  
3 investors doing window dressing, institutional investors who  
4 don't have to pay short or long term capital gains taxes  
5 don't care how often they sell, because they don't have  
6 any tax considerations. And they are the ones that account  
7 for much of the volatility, the ups and downs of the stock  
8 market, and are the managers who constantly say, well we're  
9 worried about the institutional investors.

10 And I think if we're concerned about the short,  
11 if we're going to talk about the survival of the American  
12 economy and American corporations, and then we talk about  
13 them being forced by institutional investors to look short  
14 term instead of long term, then perhaps we also ought to  
15 address the fact of why we have discriminatory taxation  
16 against the individual investor.

17 Because the institutional investors are already  
18 getting the benefit of much lower commission rates, also  
19 has the benefit of not having to pay taxes, and that's I think  
20 a major consideration that we should take into account.

21 CHAIRMAN SHAD: Any other members of the staff have  
22 comments or questions?

23 Could we go back to Commissioner Peters? You were  
24 in flight when your time expired.

25 COMMISSIONER PETERS: Well, what I was trying to

1 pursue, the thought that I was trying to pursue was whether  
2 or not in the minds or the view of this panel, the question  
3 of American investors investing in foreign stock, foreign  
4 issued stock that had disparate voting rights, was a  
5 different question than the question of whether or not  
6 corporate America should be able to issue stock with disparate  
7 voting rights.

8           And I was trying to get some input on that as  
9 whether we, as Commission, if faced with that decision could  
10 make in your view a rational distinction between the two  
11 circumstances?

12           MS. DAVIS: I'd like to comment on that. Maybe  
13 that should be reciprocity. For instance, in Switzerland,  
14 if you are a foreigner, you cannot even go to an annual  
15 meeting, you have no voting rights, you get your dividend  
16 in the form of an ABR but you better don't show up at the  
17 annual meeting. Not only if you are American, it would be  
18 the same if you were a Swiss citizen or a French citizen.

19           So then why should those people have access to  
20 our market; there should be such a thing as reciprocity.

21           COMMISSIONER PETERS: Why should the Swiss issuer  
22 have access to our market, or why should the Swiss citizen  
23 have access to --

24           MS. DAVIS: Well, we are not entitled to take part  
25 in their processes. They make a distinction between a

1 foreigner and Swiss citizens. Not only Americans, but also  
2 Germans, French and others

3 Now, in our country as far as I know, if somebody  
4 is a foreigner, they still have voting rights.

5 COMMISSIONER PETERS: Okay. Mr. Gopen?

6 MR. GOPEN: Commissioner Peters, it's my understanding  
7 that if -- leaving the Exchange out of this for a moment --  
8 if a foreign company wants to sell stock in this country  
9 to Americans, they have to abide by our standards. And why  
10 wouldn't this apply?

11 If they want to sell it over there, there's nothing  
12 we can do about it, but if they want to sell in here, don't  
13 they have to in general have to abide by certain standards  
14 of our country?

15 COMMISSIONER PETERS: In general, but the Commission,  
16 for example, has different filing and reporting standards  
17 for foreign issuers its my understanding than for domestic  
18 issuers, currently. And there is currently a proposal by  
19 the American Stock Exchange and the New York Stock Exchange  
20 to they are requesting that the Commission permit them to  
21 waive certain of their listing standards for foreign issuers  
22 who would like to list on their exchanges so that their  
23 stock can be traded in our markets.

24 And you seem to view this issue as one of one  
25 touching upon the integrity and the fairness of our markets

1 this one share, one vote issue as one touching upon the  
2 integrity and fairness of our market, and I'm wondering  
3 if it cannot also be deemed as an issue that really in  
4 essence deals with the economic structure of corporate  
5 America at a certain level.

6 MR. GOPEN: Well, I don't see the separability  
7 because --

8 COMMISSIONER PETERS: Well that's why I'm asking  
9 the question.

10 MR. GOPEN: Yeah, because and I believe it's the  
11 consensus of people on this panel that they don't want  
12 standards lowered. They want them held, and it is kind of  
13 stretching the point to use that as a justification for  
14 exceptions to lower standards; we want shareholder protection;  
15 we don't want a watering -- this is speaking for myself --  
16 I don't want a watering down of shareholder protections and  
17 public companies should respect that if they're going on  
18 stocks that are traded in this country. That's my feeling.

19 COMMISSIONER PETERS: That are traded in this  
20 country.

21 MR. HALL: There's a kind of a practical problem  
22 if you encounter a lot of people that trade ADRs here,  
23 they're going to trade the underlying securities in London,  
24 and is it worth all the fuss to move all that volume to  
25 London.

1 COMMISSIONER PETERS: Yeah, well, Mr. Hall, that's --

2 MS. QUINN: Isn't that the question?

3 COMMISSIONER PETERS: That's the question

4 MS. QUINN: That trading is different than coming  
5 over and offering raising capital and it seems to me that at  
6 least for a foreign issuer whose principal business and capital  
7 is abroad, who may not care whether they are listed here or not,  
8 the real people who are either harmed or helped by listing  
9 foreign securities here are probably the people who have  
10 invested either by purchasing abroad or purchasing here from  
11 other people where the foreign issuer hasn't taken voluntary  
12 action to come over here.

13 And really what we're talking about is whether there  
14 is a liquid and organized trading market for those securities.  
15 And it seems to me the foreign issuer situation raises  
16 substantially different questions and substantially different  
17 concerns where we're worried about accountability of corporate  
18 management, we're more concerned about domestic issuers than  
19 we are about foreign issuers whose assets and business and  
20 employees and communities are essentially abroad and not here,  
21 and we're really talking about the type of trading market  
22 for securities that are held by U.S. investors.

23 MR. GOPEN: Well, I have owned ADRs and I have  
24 found that foreign companies have made an attempt to meet  
25 our standards somewhat and to inform shareholders and to give

1 annual reports in English and to, I do know you can't  
2 practically vote at an annual meeting, giving you information  
3 on it. And I don't think they would do that, if we had  
4 no expectations of them at all.

5 And it's not preventing the trading in ADRs.

6 MS. QUINN: I don't disagree with that but when  
7 you get down to the fundamentals of asking someone to change  
8 their corporate system that's established abroad as to what  
9 the voting rights of security holders are, that may be some-  
10 thing that's much easier to provide disclosure documents  
11 that are already provided or rather than say, let's change  
12 the corporate system that perhaps the French or the English  
13 or whomever.

14 MR. GOPEN: Well, as I suggested, we can't legislate  
15 in other countries, and I'm not suggesting that we do that.

16 MR. REINISCH: Commissioner Peters, it seems to  
17 me that what the problem that you have underscored is a long  
18 term problem and it might be appropriate for the SEC to possibly  
19 convene a meeting of chairman of the major international  
20 stock exchanges to consider this problem because it is a major  
21 problem and it may require the convening of the chairman  
22 in London, Paris, Frankfurt, and other exchanges to see what  
23 can be done about it.

24 COMMISSIONER PETERS: Well, I assure you, Mr.  
25 Reinisch, we meet periodically in different fora and have

1 touched on this problem as well as others, as all of the  
2 regulators of the securities markets try to join hands and  
3 cooperate in the globalization process.

4 And I think that at least in part, because the  
5 statements made in those meetings are reported to me,  
6 I pose the question to you.

7 MR. STEWART: Commissioner Peters, you might be  
8 very careful, though, if somebody was disgruntled with the  
9 American rules such as this, like say General Motors, couldn't  
10 get on the exchange, they would take General Motors from  
11 Delaware and reincorporate it overseas then you've really  
12 got a problem.

13 So I think you might be aware of the second step  
14 you may be getting into here.

15 COMMISSIONER PETERS: Thank you.

16 CHAIRMAN SHAD: Very provocative discussion.

17 Commissioner Cox?

18 COMMISSIONER COX: I have one point that I would  
19 like some clarification on.

20 Ms. Davis, in your testimony, you said that it has  
21 been shown that companies which adopt this dual voting  
22 system usually suffer substantial price declines.

23 Now, yesterday, Professor Mikkelson testified that  
24 there was no price decline that could be attributed to this  
25 kind of change, and I believe that our office of the Chief

1 Economist has recently been working on that with a large  
2 sample of companies.

3 So I guess what I'm asking you is the source of  
4 that statement and also if the representative from our  
5 Chief Economist, Mr. Tri, would have any comment on such  
6 a statement?

7 MS. DAVIS: I did find it somewhere in the Wall  
8 Street Journal. However, unfortunately I don't have the  
9 clipping with me, but they mentioned several companies,  
10 perhaps the economist knows what I'm talking about, they  
11 mentioned several percentages, they mentioned several companies  
12 but I have not the names of the companies.

13 COMMISSIONER COX: I thought it was important  
14 to clarify this because I noticed earlier this morning  
15 Mr. Goldin talked about a substantial price decline and  
16 yet we do have yesterday Professor Mikkelson saying that  
17 the study that he was representing could find no price decline  
18 and I believe that is the result in the latest study from  
19 the Office of the Chief Economist.

20 Mr. Tri, do you have a comment?

21 MR. TRI: Yes. For the New York Stock Exchange  
22 firms which we have sampled, about 15 firms, the price for  
23 the 20-day around 20 day before and 20 day after around  
24 the event day is about eight percent increase in the price.

25 MR. GOPEN: Commissioner Cox, I'd like to speak to

1 that, please.

2 There's one basic limitation on that empirical data  
3 and that is that it's really retrospective and it does not,  
4 and I don't know how it could, take into account the future  
5 deterioration of the price of the stocks, due to the limita-  
6 tion on the voting rights, and this is something that really  
7 could be a serious problem down the line.

8 And I don't know how you could quantify it.

9 COMMISSIONER COX: I presume that the way it was  
10 quantified is that the market's reaction to such a change  
11 was taken into account, given what's happened with other  
12 companies and so forth that when this was done, the market  
13 reevaluated the shares and there was no significant decline  
14 in the price.

15 MR. GOPEN: At that time. Your problem here is  
16 granted that may have happened at that particular instant  
17 in time, but we're talking about an irreversible act here,  
18 that will affect the future of these companies and you--

19 COMMISSIONER COX: I understand that. You've made  
20 that clear, but it seems to me that the market is forward  
21 looking and takes that into account in how it evaluates it;  
22 the probability of the kind of problem coming up that you  
23 have suggested versus whatever benefits would result from that.

24 MR. GOPEN: And we've also had testimony here to  
25 the effect that you couldn't even place a value on the loss

1 of that voting power, and I think that you are sort of content  
2 to put too much weight on just what might have happened in  
3 this relatively short, was it eight, 20 day period.

4 VOICES: Forty days.

5 MR. GOPEN: Forty days.

6 CHAIRMAN SHAD: Yes. The other studies do indicate  
7 that non-voting stocks sell at a discount from voting stock,  
8 so all things being equal.

9 MR. REINISCH: Commissioner Cox, if I may comment  
10 on that.

11 Every single proxy statement that I have seen that  
12 has been issued by a corporation that intends to split its  
13 shares has indicated that the splitting of shares will result  
14 in a better market, more liquidity, and hence an improved  
15 performance of the stock.

16 However, if you look at the performance, for example,  
17 of IBM in 1979, it was \$320 a share; it split four for one.  
18 As a result of that stock split, although they didn't admit  
19 it in the proxy statement, the Commission costs went up  
20 400 percent. The stock declined after the split from 80  
21 to 49, even though in its proxy statement, they said that  
22 the performance generally is better.

23 What triggered the decline was that the earnings  
24 of IBM for a number of successive quarters started to go  
25 down. There are so many variables that dictate the price of

1 a stock, that I am not so sure that even though statistically  
2 speaking when they find 20 or 30 examples of the price of  
3 a stock going down three percent, as the Chief Economist's  
4 Office indicated, when it has no votes, I'm wondering whether  
5 if you look at other factors, it may not actually be due  
6 to other factors.

7 Because we heard this morning, when Commissioner  
8 Grundfest questioned one of the witnesses about the price  
9 of the stock the day after, I think Commissioner Sommer said,  
10 well, if you look a week later, it was up back to where it  
11 was after the decline, so I'm not sure whether we can really  
12 say that prices go down only three percent and no more because  
13 of one specific action.

14 CHAIRMAN SHAD: I don't think anybody said that  
15 the prices went down 3 percent.

16 MR. REINISCH: In the release that we got announcing  
17 the hearing, it specifically said that the Chief Economist  
18 found that prices go down three percent.

19 It's in your own release.

20 MR. KETCHUM: I think you're talking about a  
21 difference between the discount between the voting and non-  
22 voting stock, when both of them --

23 MS. DAVIS: That's where I got it from the release.  
24 That's where I got it from. It's not the Wall Street Journal.  
25 That was where I got mine from.

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COMMISSIONER COX: Okay. But I wanted to point out that that is slightly different than what we've been talking about. But thank you, I understand where that came from.

CHAIRMAN SHAD: Well, that clock over there, is a little fast, so Commissioner Grundfest or Commissioner Fleischman, do you have a further comment or question you'd like to make?

COMMISSIONER GRUNDFEST: No thank you.

COMMISSIONER FLEISCHMAN: No, thank you.

CHAIRMAN SHAD: Ladies, lady and gentlemen?

COMMISSIONER PETERS: No, no thank you.

CHAIRMAN SHAD: Thank you. We very much appreciate your contribution to these meetings.

Thank you very much.

(Whereupon, at 4:30 p.m., the hearings on this matter were concluded.)

REPORTER'S CERTIFICATE

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DOCKET NUMBER:

CASE TITLE: PUBLIC HEARING ON N.Y.S.E. "One Share, One Vote"

HEARING DATE: December 17, 1986

LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the UNITED STATES SECURITIES AND EXCHANGE COMMISSION.

Date: December 17, 1986

alan friedman

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