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U.S. House of Representatives
Committee on Energy and Commerce
Room 2125, Rayburn House Office Building
Washington, DC 20515

May 19, 1988

The Honorable David S. Ruder
Chairman
Securities and Exchange Commission
450 Fifth Street, N. W.
Washington, D. C. 20549

Dear Chairman Ruder:

This letter is with reference to recent press reports, e.g., "SEC Should Let Congress Decide Issue Of Holder Voting Rights, Proxmire Says," Wall Street Journal, Monday, May 9, 1988, and related correspondence from the chairman and ranking Republican member of the Senate Committee on Banking, Housing, and Urban Affairs.

That correspondence suggests that the Commission is without statutory authority to promulgate a rule to protect shareholder voting rights, and, even if the Commission had such authority, it asserts that the study required by Section 17 of S. 1323 divests the Commission of its authority in this area.

It is my view that the Commission has the authority to mandate a one share, one vote rule, and I know of no rule of statutory construction by which the mere introduction and reporting of a bill requesting a study would strip an agency of its statutory authority over the subject matter of that study.

In the Securities Acts Amendments of 1975, the SEC was given the broad authority in Section 19(c) to "abrograte, add to and delete from...the rules of a self-regulatory organization..." as the SEC deems necessary or appropriate to carry out the purposes of the Exchange Act. There are no categories of SRO rules excepted from the reach of this section.

There is nothing in the applicable sections of the 1934 Act to suggest that SRO rules dealing with the listing of securities are not encompassed by the broad language represented by "the rules of a self-regulatory organization." If, nevertheless, one wishes to find a clear indication that Congress specifically intended that

the category of listing standard rules was intended to be included within the "rules of a self-regulatory organization," reference can be made to the prior law, specifically old Section 19(b), that was part of the original 1934 Act. That section authorized the SEC to amend the rules of an exchange with regard to 13 enumerated categories. The third category, Section 19(b)(3), was "the listing or striking from listing of any security...." The legislative history of Section 19(c) makes it clear that Congress, by dropping the 13 enumerated categories in favor of referring to "the rules of a self-regulatory organization" without enumeration, intended to broaden -- not reduce -- the SEC's authority in this area.

For example, Senate Report No. 93-865 at pp. 27, 28, and 46, clearly states the intent of the Senate Banking Committee as follows:

> In order to assist the Commission's efforts to establish and adequately regulate a national market system, the bill would greatly expand the Commission's direct regulatory powers over the nation's trading markets and the participants in those markets.
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> At present, the SEC's indirect powers are limited in scope and cumbersome to exercise. Under present section 19(b) of the Exchange Act the SEC has the power after 'notice and opportunity for hearing' to require changes in the rules of exchanges with respect to twelve enumerated subjects and 'similar matters.' Under present section 15A(k)(1) it may abrogate any existing NASD rule, and under present section 15A(2), the SEC may require changes in the NASD's rules with respect to four procedural subjects.
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> There are several problems with the SEC's existing indirect regulatory powers. First, there is no reason for the SEC to have divergent authority with respect to the NASD's rules on the one hand and the exchanges' rules on the other. Under the bill, therefore, section 19(b) [subsequently redesignated section 19(c)] would give the SEC uniform authority to 'abrogate, alter, or supplement' the rules of 'any self-regulatory organization.'
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> Second, there has been a continuing controversy as to the precise scope of the SEC's power to amend the rules of a self-regulatory organization. Without commenting on the merits of particular controversies, the Committee believes that the Commission should have the clear authority to abrogate any self-regulatory rule and to require the amendment of a self-regulatory organization's rules in any respect consistent with the

> objectives of the Exchange Act. Section 19(b) would give the SEC this plenary power.
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> This subsection embodies two principal changes in existing law: (1) the SEC would be granted the power to change the rules of a self-regulatory organization or organizations in any respect, not just with respect to certain enumerated areas, and (2) the procedures that the SEC must follow in utilizing this power would be clearly specified. Although amended section 19(b) would give the SEC plenary power over self-regulatory rules, the section in no way limits the SEC's ability to use its other powers to force self-regulatory rule changes or modifies the standard requirements that it must comply with in doing so. (Emphasis supplied)

I also wish to point out that the promulgation of a one share, one vote rule by the Commission was fully contemplated when I introduced H.R. 2172. As explained in the analysis of Section 3 of that bill (Congressional Record, April 27, 1987, E1562-3):

> Currently, the SEC is trying to resolve the public policy and legal questions presented by the disparate voting rights rule proposal of the New York Stock Exchange (File Nos. SR-NYSE 86-17 and 4-308) and the numerous comments submitted in response to Release 34-23803 (November 13, 1986). In view of the long standing role of listing standards in sections 12(d), 12(f) and 19 of the Exchange Act, and the fact that those standards have had 'qualitative' aspects since the 1930's, coupled with the 'investor protection and the public interest' and other Exchange Act standards applicable to self-regulatory organization rules by reference to the standards implicit in and the objectives of sections 11A, 14(a), 14(d) and 14(e), the Exchange Act clearly authorizes the SEC to prescribe shareholder voting rights in the context of self-regulatory organization listing and eligibility rules by Commission action under section 19(c) and enforced under section 19(h). See, e.g., letter to the SEC from Andrew M. Klein, dated February 19, 1987. Section 3 of the bill is not intended to limit the SEC's present authority. The results of the ongoing SEC rulemaking will be evaluated in the legislative hearings in connection with section 3. (Emphasis supplied)

The Commission has held extensive public hearings on this matter and received considerable public comment on the advantages and disadvantages of dual classes of stock and for and against Federal action in this area. It is time to move forward with sound and appropriate safeguards that will ensure the continued partici-

pation of the American shareholder in corporate policy commensurate with his economic investment and share of the residual risk in a public enterprise.

Voting by public shareholders represents an important accountability mechanism. The shareholder vote, as you know, applies to a broad class of fundamental issues and corporate actions beyond the acceptance or rejection of a tender offer bid. Congress enacted section 14(a) of the 1934 Act to promote fair corporate suffrage and to curtail management's dominance and misuse of corporate proxies. Allowing the widespread abrogration of the voting rights of common stockholders would undercut the investor protections set forth in the Commission's proxy rules and render null an otherwise effective and essential element of corporate democracy.

I ask that you make this letter a part of the public record of these proceedings, and that you advise me at your earliest convenience of your intentions. These comments are limited to your statutory authority in general and are not an expression of support for any specific rule. If you decide to go forward, I would appreciate being apprised of what you intend to propose for adoption.

Thank you for your consideration of these views.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

cc: The Honorable William Proxmire
The Honorable Jake Garn
The Honorable Edward J. Markey
The Honorable Norman F. Lent