

September 20, 1991

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

Re: Release Nos. 34-29315, IC-18201; File No. S7-22-91;
Proxy Regulation

Dear Mr. Katz:

The New York Stock Exchange appreciates the opportunity to comment on the above-captioned release (the "Release"). In the Release, the Commission discusses the proxy process in general and proposes four specific amendments to its proxy rules. The Commission also states that it is currently engaged in a "comprehensive review of the current efficacy of the federal proxy rules" and describes the current proposal as the "first in a series of possible rulemaking initiatives. . . ."

We believe that the Commission's proposals raise fundamental issues regarding the proxy process. We strongly recommend that the Commission defer action on these proposals until there is an opportunity for a more thorough examination of the entire area.

Review of the Proxy Process

As the Commission notes in the Release, there have been recent "significant change[s] in securityholder demographics resulting in a concentration of institutional equity ownership and voting power, and increasing securityholder activism with respect to matters of corporate and partnership governance." Thus, "individual and institutional investors alike have focused increasingly on their rights and obligations to cast informed proxy votes."

In recognition of the changes, the Commission states that, for more than a year, it has been engaged in a comprehensive review of the efficacy of the federal proxy rules as applied to all registrants. Indeed, even without the initiation of a formal rulemaking process, the Commission notes that it has received more than 40 submissions either proposing or opposing revision of the current proxy system.

We support the Commission's review of the proxy process. As the Commission is aware, we are also conducting our own review of the entire corporate governance area, including the proxy process. In three symposia to be held this fall, in October and November, we will be bringing together representatives of our various constituencies to discuss many of the same issues the Commission is considering. Our symposia will include not only members of the Exchange's Board of Directors, but also leading representatives of the issuer, academic and legal communities, leading institutional and individual investors, and other persons with interests in the proxy process.

Commission Action Now Would Be Premature

We believe that the Commission's current proposals could result in dramatic changes to the proxy process. In particular, the exemption for "disinterested persons" from all but the anti-fraud proxy rules and the proposed changes regarding access to securityholder lists represent significant changes from current practices. However, with the Commission's ongoing review in the area, it is clear that these proposals represent only a portion of the proxy revisions that the Commission will ultimately be proposing. Thus, asking for comments now seems premature.

We also are concerned that there has not been an adequate opportunity for all potential commentators to consider the full ramifications of the proposals. The SEC issued the Release at the beginning of the summer and, even with the recent extension, the comment period will terminate soon after the end of the traditional vacation season. Moreover, although the reach of the proposals is quite wide, the discussion in the Release focuses on particular abuses, and thus may not have alerted all potential commentators to the breadth of the proposals' application.

We believe that proposals of this significance require a more thorough examination. Specifically, we believe that the Commission should give the Exchange and its constituent community impacted by these proposals an opportunity to address these specific issues in the context of a broader review of corporate governance issues in general, or at least in the context of comprehensive proxy reform.

Accordingly, we believe that Commission action at this time would be premature. We strongly urge the Commission not to take piecemeal action, but to first provide an opportunity for the investment community to fully consider the ramifications of the Commission's proposals.¹

We again thank you for the opportunity to comment on the Release. If the Commission has any questions on this letter, please do not hesitate to call.

Sincerely yours,

James Burk

[1 The Release indicates that, at least in part, the Commission's proposals are directed towards narrow abuses in a small subsets of the market, such as the area of limited partnership "roll-ups." If this is the case, we would support the Commission's refocusing and redefining the current rulemaking proceeding to address this target area alone. Reproposing rules specifically addressing such possible abuses will properly focus the debate on the protection of investors in areas where the Commission has identified specific abuse, and will not present the more global concerns raised by the current proposals.]