UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

December 1, 1994

The Honorable Dianne Feinstein
United States Senate
Washington, D.C. 20510-0504

Attention: Karen Flores

Dear Senator Feinstein:

This is in response to your letter of November 3, 1994 relating to your constituents' concern about the treatment of shareholder proposals dealing with a company's operations in Myanmar (formerly Burma).

During the 1994 proxy season, the staff received requests from three companies Amoco Corporation, PepsiCo, Inc. and Texaco, Inc. under rule 14a-8(d) to exclude proposals that requested each company to withdraw its operations from Myanmar. Each company asserted that the proposal could be omitted from its proxy materials in reliance on, inter alia, rule 14a-8(c)(5). Rule 14a-8(c)(5) allows a company to exclude a proposal from its proxy materials if the proposal relates to operations of a company which (i) account for less than 5% of a company's total assets, net earnings and gross sales in the most recent fiscal year and (ii) if the proposal is not otherwise significantly related to a company's business. 17 CFR 240.14a-8(c)(5). Each company asserted that its operations in Myanmar accounted for less than 5% of its total assets, net earnings and gross sales. Further, each represented that the issues raised by the proposal (i.e., the detention of political prisoners and the transfer of power to a democratically-elected government) was not otherwise significantly related to their company's business in Myanmar. Accordingly, in each case the staff took the position that it would not recommend enforcement action to the Commission if the proposal was omitted from the company's proxy materials in reliance on 14a-8(c)(5).

It should be noted that the cited provisions of rule 14a-8(c)(5) were equally applicable to past proposals addressing a company's activities in South Africa, referred to in the letters from your constituents. The different positions expressed by the staff with respect to the proposals relating to South Africa and Myanmar arise from the relevance of the issues raised by the proponents to the business operations of the companies in those countries.

It is important to note that the staff's no-action responses to rule 14a-8(d) submissions reflect only the staff's informal views. The determination reached by the staff in these no-action letters does not and cannot purport to adjudicate the merits of a company's position with respect to a proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy material. Accordingly, a discretionary

determination by the staff not to recommend enforcement action to the Commission does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against a company in court, should the management omit the proposal from a company's proxy material. The staff's role in the shareholder proposal process is explained further in the enclosed copy of the Division's Statement of Informal Procedures for Shareholder Proposals. A copy of this Statement is enclosed in the staff's responses to no-action requests under rule 14a-8(d) and is sent to both the shareholder proponent and the company.

As you may know, in a similar context, on March 3, 1993 the New York City Employees' Retirement System ("NYCERS") brought suit against the Commission in connection with the Commission's position with regard to the exclusion of employment related proposals that raise social matters. In light of the pending litigation, it is inappropriate to comment on the application of rule 14a-8(c)(7) at this time.

I trust that this response has been helpful.

Sincerely,

William E. Morley
Senior Associate Director

Enclosure