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March 31, 2004

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549

Re: Security Holder Director Nominations
File No. S7-19-03

Dear Mr. Katz:

I write this letter in my capacity as the President and CEO of the Financial Services Forum (“Forum”). The Forum is an organization comprised of 18 chief executive officers of major financial services firms dedicated to the execution and coordination of activities designed to promote the development of an open and competitive financial services industry.

I write this letter to share my thoughts on the SEC’s proposed rules relating to Security Holder Director Nominations (“shareholder access”). This letter is by no means a comprehensive analysis of the above referenced proposed rules. Instead, it addresses key elements and questions the necessity for such rules. This letter further proposes some very general alternatives in the event the SEC decides to implement shareholder access rules.

The SEC has taken an important step towards addressing the issue of poor shareholder communications in the proxy process. The Forum shares the SEC’s concerns about unresponsive boards. A good board is a responsive board, and there should be transparency in the director nomination process. Nevertheless, the Forum questions the scope of the proposed rules as well as their immediate necessity.

The first comment period and subsequent SEC Roundtable have evoked several thoughtful critiques. The comments of The Business Roundtable (“BRT”), for example, have revealed important substantive issues with the proposed rules.

The Forum shares many of these concerns. We believe the proposed shareholder access rules would influence more than the narrow issue of shareholder communications as they relate to the proxy process. Of particular concern is the fact that these rules will apply equally to well-run companies with responsive boards as they do to poorly run companies with unresponsive boards. Furthermore, we believe the proposed rules would distract

responsive boards with contested elections where they are not necessary and would reduce the operational effectiveness of boards with special interest directors.

Moreover, we believe the proposed rules are too complex and confusing. As many critics have already argued, the rules presently have a “Rube Goldberg” quality. Even worse, I fear that these rules will make it difficult for companies to attract competent, experienced board members.

The SEC should recognize that we have witnessed historic advances in the area of corporate governance over the past few years. The Sarbanes-Oxley Act, revised listing standards, and new SEC rules have had, and will continue to have, a profound and positive impact on corporate governance. Recent reforms will increase the dominance of independent directors, especially those on nominating committees. Prudence suggests that we wait for recent reforms to show their full potential before implementing the proposed proxy access rules.

Should the SEC nonetheless decide to implement some form of shareholder access and ignore the alternatives proposed by the BRT, then I suggest some modifications to the proposal’s key elements:

- Triggers: Instead of three triggers, the SEC should implement only one. This trigger will take effect when a director has failed to receive 50% of the votes cast.
- Cure Period: Once 50% of votes are withheld, it is vital that the board have the opportunity to address and provide a prompt cure to shareholder concerns.

A cure could come in the form of affirmative action by the board. One example could be the board requesting the resignation of the director who received the 50% withhold vote or publicly announcing an intent not to renominate the renounced director. Another could be adoption of a majority vote requirement for such director. The SEC could give a board time under the current rule 14a-8 deadline to publicly announce its intended cure. *Assuming that the board fails to take some affirmative action, then, and only then, should shareholders have the opportunity to nominate a director.*

- Shareholder(s) Eligible to Nominate: There has been some dispute about the ownership threshold for shareholder(s) eligible to nominate. The SEC suggests a 5% threshold, while others suggest a 25% threshold. I believe the proper ownership threshold probably remains somewhere between the two proposals. A 10% share ownership requirement seems reasonable for individual shareholders, while a higher share ownership requirement seems appropriate for groups of shareholders.
- Shareholder Disclosure: In the interests of full disclosure, nominating shareholder(s) should be required to file a Schedule 13D.

- Role of the Nominating Committee: The board nominating committee should remain involved in the process of shareholder nominations, and must have the opportunity to screen all candidates. The proxy rules could be amended to allow a shareholder whose candidate was rejected to propose another candidate. Rules of independence and disclosure will ensure the integrity of nominating committees. Let us let independent nominating committees do the job for which they were intended.
- Number of Nominees: Shareholders should be permitted one nomination, instead of a number based on the size of the board.
- Listing Standard: Implementation of these suggestions as a listing standard on Nasdaq and the New York Stock Exchange would reduce the risk of litigation.

Adoption of the above suggestions will serve several policy interests. First, a 50% withhold vote trigger is a more reliable indicator of serious shareholder dissent. Second, the above suggestions will restore the democratic concept of majority rule to the nomination process. Indeed, we have not yet seen a cogent reason for the 35% requirement, and many have persuasively criticized it for giving too much power to a minority of shareholders with very narrow agendas. Third, a board cure period will target the issue of communications as it pertains to the proxy process. After all, if the board addresses promptly the issues raised by the shareholders, then the rules have served their purpose by making the board more responsive.

Finally, these suggestions will provide more disclosure than the current SEC proposal. By keeping the nominating committee involved, and by requiring a Schedule 13D filing by nominating shareholders, all investors will have more complete information regarding the nominating process. The Schedule 13D filing is also consistent with the SEC's guiding philosophy of requiring disclosure for those targeting control of a company.

These are only suggestions, and the Forum would prefer that the SEC avoid implementing any rules until we can properly assess the effects of recent reforms. If these reforms improve communications between shareholders and boards, then any further rulemaking by the SEC will be redundant.

Thank you for considering the concerns of the Financial Services Forum. Please do not hesitate to contact me if you wish to discuss these issues in more detail.

Very truly yours,



Rick Lazio
President & CEO

cc: Hon. William H. Donaldson—Chairman, U.S. Securities and Exchange
Commission
Hon. Paul S. Atkins, Commissioner
Hon. Roel C. Campos, Commissioner
Hon. Cynthia A. Glassman, Commissioner
Hon. Harvey J. Goldschmid, Commissioner
Giovanni P. Prezioso, General Counsel
Allan L. Beller, Director, Division of Corporation Finance