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June 15, 2004

Mr. Jonathan G. Katz, Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

File No. S7-13-04

Dear Mr. Katz:

In light of recent Commission rulemaking and petitions for rulemaking, the request for comments in the concept release, "Securities Transactions Settlement" (Release No. 33-8398, FR Vol. 69, p. 12922) (the "Concept Release") is very well timed. My comments point to the important link between the structure of the securities settlement system and shareholder communications.

Regretfully, the implementation of the Congressional mandate expressed in § 17A Exchange Act to "facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities" has to a great extent directly conflicted with the Commission's efforts to promote informed proxy voting under § 14 of the Exchange Act. The result, found in Rules 14a-13, 14b-1 and 14b-2 under the Exchange Act,¹ is a complex, time-consuming, and expensive system of inquiry and distribution that makes an imaginative but inadequate attempt to restore shareholder communications. The "Direct Registration System" (DRS) on which the Commission has focused some attention for at least ten years² could correct this situation.

For this reason, the Commission should seriously consider combining the fact-finding and comment processes under the current Concept Release with the Business Roundtable's April 12, 2004, "Petition for Rulemaking Regarding Shareholder Communications" (the "Petition") and the Commission's proposed rule, "Issuer Restrictions or Prohibitions on Ownership by Securities Intermediaries" (Release No. 34-49804; File No. S7-24-04) (the "Proposed Rule").

The DRS would allow shareholders to "register securities in their own names" (Concept Release, p. 12934) rather than conduct all dealings with their issuer through a financial intermediary that serves as the registered shareholder for a fungible bulk of immobilized shares. As the Business Roundtable correctly points out, the current structure of indirect holdings creates a system of anonymous shareholdings financed primarily by issuers, rather than following the simple principle that "those who value their privacy should bear the cost of maintaining their anonymity" (Petition, p. 13). We have created a system that is even worse than the bearer share system used in Continental Europe. The extreme irrationality of keeping issuers and shareholders secretly secluded from each other, while third party service-providers such as clearing agencies have ready access to the relevant information has led to awkward solutions such as the efforts to restrict share transfers, as discussed in the Proposed Rule.

¹ 17 CFR §§ 240.14a-13, 240.14b-1 and 240.14b-2.

² See Concept Release, "Transfer Agents Operating Direct Registration System," Release No. 34-35038; File No. S7-34-94 (*Federal Register*, December 8, 1994).

This secret shareholding arrangement is normally justified as the unfortunate result of an effective clearance and settlement system. However, the technology of 1974 is not the technology of 2004. Dematerialized securities settled through a DRS or immobilized securities settled through another system that replicates shareholder data from clearing agencies to transfer agents would restore the proper relationship between shareholders and their companies.

If immobilization, dematerialization and DRS are discussed in isolation from their impact on the *content* of shares, such as voting rights, the true advantages of the DRS will likely remain unexpressed. Further, if the expensive and time-consuming detours in shareholder communications under the Proxy Rules and the other problems arising from anonymous shareholdings are discussed divorced from the structural problems that cause them, no workable solution will be found. As stated in § 17A(a)(1)(C) Exchange Act, "new data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement." Such technology also allows the *content* of shares to be preserved. If shareholders were to understand that dematerialized shares settled through a DRS would give them a more direct relationship with their company and the other shareholders than that provided by certificated securities held through their broker, they would also understand why they should give up paper.³ If the Commission were to clearly explain the corporate governance advantages of the DRS or similar systems, state lawmakers, issuers and the investing public would understand why they should embrace dematerialization. If the Commission continues to address securities settlement with isolated focus on timing and risk without considering the *content* of the shares subject to the settlement system, issuers and the securities settlement industry could well continue to work at cross purposes.

I respectfully request that the Commission study reducing the use of physical securities in the context of the impact of the securities settlement system on corporate governance (i.e., ease of shareholder communications, the cost and speed of the current system for distributing proxy materials, and the extent to which shareholder registers really contain any information – allowing issuers to address “naked” short selling, creeping tender offers and other undesired activities). In light of current technology, there is no reason why § 17A Exchange Act should create an undesired culture of shareholder anonymity that must then be overcome with expensive and time-consuming procedures under the Proxy Rules. National security concerns such as money-laundering and the financing of terrorism would also be much easier to address in a system of transparent shareholdings.

Yours sincerely,

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³ The investor relations departments of issuers could certainly think of replacements for paper, such as "membership cards" (perhaps in silver, gold and platinum indicating a numerical span of shareholdings), capable of downloading the exact volume of the shareholder's holdings at some interval (perhaps daily) onto a chip from a website managed by the company's transfer agent.