

BY EMAIL

April 30, 2004

Mr. Jonathan G. Katz
Secretary
U.S. Securities & Exchange Commission
450 Fifth Street N.W.
Washington DC 20549-0609

Dear Mr. Katz:

Re: Business Roundtable Petition for Rulemaking Regarding Shareholder Communications

The American Society of Corporate Secretaries (“Society”) strongly supports the Business Roundtable’s Petition for Rulemaking regarding Shareholder Communications submitted on April 12, 2004 (“Petition”).

The Society is a professional association founded in 1946, serving more than 4,000 corporate attorneys and other business executives who represent over 3,000 public companies. Our members typically are responsible for assuring issuer compliance with securities regulations and listing requirements; coordinating activities with shareholders, including annual and special meetings of shareholders; and working with corporate boards of directors and senior management regarding corporate governance. Almost all Society members are directly responsible for ensuring that shareholder communications of all types comply with applicable securities law and stock exchange requirements. Further, almost all Society members are either directly responsible, or counsel those who are directly responsible, for soliciting the vote at shareholder meetings, selecting and coordinating with outside, professional solicitors, arranging for the vote tabulators and inspectors of election to count the votes in preparation for, and at, shareholder meetings, and the mechanics of delivering (by mail or email and directly and through third parties, communications to shareholders).

Like the Business Roundtable, the Society’s members are concerned about ongoing problems with the current shareholder communications system pursuant to which they communicate with the beneficial owners of their securities held in street or nominee name. Accordingly, we urge the Commission to re-examine the system in light of technological and regulatory developments. The Society’s members believe the current communication system is overly cumbersome and expensive, as the Business Roundtable has explained in detail in the Petition. The current regulatory requirements addressing companies’ communications with their shareholders prevent companies from communicating directly with most of their street name holders. Instead, they must go through brokers and banks or their agents to distribute proxy materials to street name holders and tabulate voting results. As a result, it is very difficult and expensive for companies to communicate with their beneficial owners. Moreover, almost anyone who works on these mundane, yet critical tasks has anecdotal information about the challenges of tracing votes – even where the beneficial owner is asking for the issuer’s help in so doing and fully cooperating

– from the beneficial owner’s vote or voting instruction, through various levels of nominee holders to the record holder to the tabulators and inspectors of election. Thus, the system is indeed broken and needs fixing.

Technological advances have made direct communications far more feasible than when these rules were last formally considered. As the Society’s Securities Law Committee wrote in our March 30, 2004 and December 22, 2003 comment letters to the Commission on its proposed director nominations rules, our members are very concerned, based upon their regular duties in communicating with shareholders and soliciting votes on routine matters, that the ability to communicate with shareholders and the transparency of ownership and the voting system needs to be improved for the proposed rules to be workable without significant negative consequences.

Therefore, the Society urges the Commission to conduct a thorough review of the current shareholder communications system and consider rule changes to facilitate communications by companies to shareholders. We join the Business Roundtable in recommending that the Commission consider requiring brokers and banks to provide companies with contact information for all beneficial owners permit companies to mail proxy materials directly to all beneficial owners as part of the review, and require brokers, banks and their agents to pass voting rights directly to beneficial owners. We believe this is an important step in improving communications between companies and all their shareholders, a critical component to the Commission’s stated goal of enhancing security holders’ ability to participate meaningfully in the proxy process

Thank you for considering our position on the Petition. In light of our members’ extensive experience with the shareholder communications system, we would be happy to provide whatever assistance the Commission or members of the Commission staff would find most helpful in dealing with these issues.

Sincerely,
David Williamson Smith
President
American Society of Corporate Secretaries

cc: Hon. William H. Donaldson, Chairman-U.S. Securities & 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
Alan L. Beller, Director-Division of Corporation Finance
Annette L. Nazareth, Director-Division of Market Regulation