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September 5, 2003

Secretary
United States Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549

Staff Report: Review of the Proxy Process
Regarding the Nomination and Election of Directors

Ladies and Gentlemen:

We write to oppose proposals of the Securities and Exchange Commission (the "Commission") that would permit shareholders to use a company's proxy statement to run a director election contest. In expressing our opposition, we cannot improve upon the expression of views made publicly by Martin Lipton and Steven Rosenblum of Wachtell, Lipton, Rosen & Katz. Their thorough analysis and clear expression of reasons not to promulgate the Commission's proposals seem to us compelling, particularly in the face of any clear expression of what problem the Commission is attempting to solve.

At this point we are about one year after the initial implementation of the Public Company Accounting Reform and Investor Protection Act of 2002 (the "Sarbanes-Oxley Act"). Since that time the Commission has labored long and hard to produce promulgating rules for that law, a strenuous task for which the Commission is to be commended. In addition, each of the New York Stock Exchange and Nasdaq Market have been revising their own rules regarding corporate governance. By and large, at first blush the rules appear to be appropriately responsive to the mandates of the Sarbanes-Oxley Act.

For those of us who labor in the fields of trying to bring our companies into compliance with the blizzard of new governance and other requirements mandated by the Sarbanes-Oxley Act, the new Commission rules and the exchange proposals, it has been an intense and challenging year. At this stage, though, it appears to us that it is too early to tell whether further changes to corporate governance standards not mandated by Congress

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should be required. Indeed, before implementing new mandates, we think a serious assessment is merited as to whether public companies have become so burdened with governance requirements that they may be losing their entrepreneurial and business readiness to compete and create shareholder value. An article this week on the editorial page of *The Wall Street Journal* by Peter Wallison made that very point.

While politically not correct, we think a common sense point also needs to be made here. The last two years brought us several appalling corporate accounting and governance scandals: Enron, WorldCom, Tyco, Adelphia, Health South to name the most prominent. There were others as well, but <u>not very many</u>. There have always been, unfortunately, accounting and governance scandals, notwithstanding the successful regulatory scheme contained in the securities laws and administered by the Commission, the exchanges, (fortunately rarely) the Justice Department, the states and the private bar (both as plaintiff counsel in enforcement actions, but even more so as issuer counsel in everyday compliance matters). American capital markets have no serious competitor elsewhere in the world due largely to the American securities regulatory framework. The common sense point, then, that needs to be made is that even prior to the passage of the Sarbanes-Oxley Act corporate governance of American public companies was working very well, as the world has never seen in its history a more prosperous country or people. The Sarbanes-Oxley Act with its imposition of many additional formal, but mostly procedural, requirements may help strengthen an already very strong system. We should not forget either the far-reaching impact of Regulation FD, the impact of which, we think, will be far greater than the Sarbanes-Oxley Act. The point remains, though, there is no evidence that additional changes are needed in our system of corporate governance.

That brings us back to our main point then, which is that there is no public policy problem to be solved with the proposals to grant activist shareholders access to a corporation's proxy statement. Special interest groups, as Messrs. Lipton and Rosenblum ably point out, have already hijacked the Rule 14a-8 shareholder proposal process with a lot of irrelevant and needless proposals. And, the far more important point they make is that far more analysis of the roles and relationships of the various existing constituencies in American corporations needs to occur before the introduction of potentially far-reaching and extremely dangerous proposals regarding the election of activist directors representing specific shareholders.

Corporate boards have functioned effectively through the traditional American collegiality model for many years. Despite the several highly publicized breakdowns of board effectiveness in the past two years (and one should not forget that the Enron governance documents in place at the time of its debacle have been held up as models of corporate governance at many Sarbanes-Oxley lawyer conferences in the past year), there is simply no evidence that the collegiality model is broken, damaged or in need of any repair or renovation whatsoever. Messrs. Lipton and Rosenblum make that point in the much broader context of shareholder-board relationships, corporate takeover practices and other relevant issues. We join them in those views.

Thank you for the opportunity to comment. If you have any further questions about our views, please do not hesitate to contact us.

Very truly yours,

Charles W. Sprague
Executive Vice President,
General Counsel and Secretary
Chief Administrative Officer