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September 12,2003

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

Re: Disclosure Regarding Nominating Committee Functions and Communications Between Security Holders and Boards of Directors
File No. S7-14-03; 68 FR 48724 (August 14,2003')

Dear Mr. Katz:

America's Community Bankers (ACB)' is pleased to comment on the proposed rule issued by the Securities and Exchange Commission (SEC) to enhance public company disclosure about the director nominating process and shareholder communications with directors.[2] The proposal is the initial action taken by the SEC in response to recommendations made by the Division of Corporation Finance in a July 15 staff report on the nomination and election of public company directors.[3] The SEC views this as a first step in improving the proxy process as it relates to the nomination and election of directors and plans to consider later in the year proposals to provide shareholders with direct access to the proxy process.

ACB Position

ACB believes that more disclosure about the process for nominating directors and for enabling shareholders to communicate with directors will be an effective means to increase shareholder understanding of the nominating process, board accountability, board responsiveness and a company's corporate governance policies. If the disclosure requirements are adopted, we would encourage the SEC to allow time to assess the effects of the requirements before proposing additional changes to the proxy process.

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[1] ACB represents the nation's community banks. ACB members, whose aggregate assets total more than $1 trillion, pursue progressive, entrepreneurial and service-oriented strategies in providing financial services to benefit their customers and communities.
[2] 68 Fed. Reg. 48724 (August 14,2003).
[3] "Staff Report: Review of the Proxy Process Regarding the Nomination and Election of Directors," available at www.sec.gov/news/studies.shtml.

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Nevertheless, ACB suggests that broader, less detailed disclosure standards would better achieve the rule's objectives while still eliciting the type of information that shareholders would want to see. If more specific and detailed standards are adopted in a final rule, they should not include a requirement that a company disclose whether nominating committee members are independent unless the company is required to have an independent nominating committee. It is inappropriate to ask a company that does not have to have an independent nominating committee to analyze each member under an unfamiliar and detailed definition of independence for such a limited purpose,

Disclosures About the Nominating Process

The proposal would require public companies to provide specific details about the process used by a company to nominate directors, including information about whether the company has a separate nominating committee, whether members of the nominating committee satisfy independence requirements, the process for identifying and evaluating candidates to be nominated as directors, minimum qualifications and standards that a company seeks for director nominees, whether the company considers candidates nominated by shareholders, and whether the company has rejected candidates nominated by large, long-term shareholders or groups of shareholders.

ACB understands the intent behind the approach taken to require detailed and specific information, but questions whether a different approach would be more effective. In order to avoid the disclosure becoming a boilerplate checklist of information, we suggest that the SEC consider simplifying the proposal by requiring a detailed discussion of two items: the process followed for nominating directors and how shareholders can participate in that process. Those items would appear to elicit the type of information the SEC considers important for shareholder understanding of the nominating process. It also would remove the redundancy in the current proposal. For example, it is likely that the requirement to provide the source of candidates and the process for identifying and evaluating candidates would necessarily require disclosure of whether third parties are involved in identifying and evaluating Candidates. Likewise, the existence of a nominating committee also would have to be disclosed when discussing the process for identifying candidates. While we do not oppose the listing of specific items that must be included in the disclosure, we do not believe it is necessary to elicit the information that will be most valuable to shareholders.

We do not think the requirement to disclose whether nominating committee members are independent is appropriate, particularly for companies that are not subject to a requirement that the members be independent. The disclosure of this information would not meet the SEC's goals of providing information meaningful to shareholders in evaluating the nominating process, how the process works, and the seriousness with which the process is considered by the company. Also, it places an undue burden on companies that are not required to have an independent nominating committee by requiring that they parse through a fairly detailed definition of independence and evaluate each committee member for the sole purpose of a disclosure that is

not all that relevant. There could be adverse consequences to a company that misinterprets or misapplies unfamiliar, detailed definitions for such a limited purpose.

What would seem of more concern to shareholders is whether the nominees are independent. For listed companies that will need a majority of independent directors under the proposals of the self-regulatory organizations, this analysis and disclosure would not be a major burden if the definition of independence was the same one adopted by the self-regulatory organizations. However, we would not support such a requirement for companies, generally smaller firms, that do not otherwise need to perform this analysis.

Also, the SEC should use caution when determining whether to require the disclosure of financial interests between a nominee and his or her sponsor. Consideration of this question will necessarily raise the issue of why only certain information about the nominee should be disclosed. Different types of relationships and connections, such as whether the candidate and sponsor went to school together, belong to the same clubs, or live in the same neighborhood, may be considered important, maybe even more important than financial connections, to some shareholders. The disclosure could become complicated and overly detailed if a company had to address all of the types of possible relationships that a shareholder might like to know about.

ACB encourages the SEC to reconsider the shareholder threshold numbers for determining whether the rejection of a shareholder nominee needs to be disclosed. While choosing the threshold is somewhat arbitrary, we believe that the aggregate number should be higher to reflect a certain amount of support for a candidate from a larger number of smaller shareholders. We would suggest 10 percent. Also, we believe that the disclosure about the rejection of a shareholder nominee should be required only if the shareholders nominating a candidate provide information about the candidate and explain how the candidate meets the minimum qualifications to serve as a director of the company. Even if this is not a requirement in the rule, we assume that in describing the process that shareholders must follow to nominate a candidate, a company can establish this as a requirement and disclose the failure to provide the necessary information as the reason for rejecting the candidate.

Shareholder Communication with Directors

The proposal also would require the disclosure of specific information about the ability of shareholders to communicate with directors, including whether a company has a process to allow communications with directors, the procedures for such communications by shareholders, whether such communications are screened, and whether material actions have been taken as a result of shareholder communications.

Similar to our comments above with regard to the nomination of directors, we believe that the proposal could be simplified by omitting the specific disclosure items and instead requiring detailed disclosure about how a shareholder can communicate concerns and suggestions about the company to directors.

If the SEC adopts the proposal with a list of specific items to be disclosed, we urge that it limit the requirement to describe material actions taken as a result of shareholder communications with the board to formal petitions from shareholders. Otherwise, such a requirement would be too difficult to implement. For one thing, it would be difficult to interpret the meaning of "material action" in light of the large variety of issues or concerns that could be raised by shareholders. Also, limiting the requirement to formal petitions would exclude communications with directors by management and employees that are more appropriately handled in the ordinary course of business.

ACB appreciates the opportunity to comment on this important matter. If you have any questions, please contact the undersigned at (202) 857-3121 or via e-mail at cbahin@acbankers.org, or Diane Koonjy at (202) 857-3144 or via e-mail at dkoonjy@acbankers.org.

Sincerely,

Charlotte M. Bahin

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