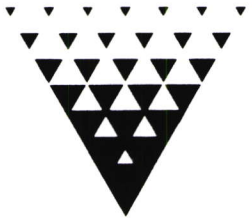

August 1, 1991

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Jonathan G. Katz, Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: File No. S7-22-91: Regulation of Securityholder Communications -- Proposed Rules (Exchange Act Release No. 29315).

Dear Mr. Katz:

I would like to comment briefly on behalf of Institutional Shareholder Services, Inc. ("ISS"), concerning the above-referenced rule-making proposal of the Securities and Exchange Commission (the "Commission") regarding securityholder communications (the "Proposing Release"). ISS is a consulting firm to the investment industry. One of our basic services is providing to institutional investors in-depth analyses of, and recommendations for, complicated and other proxy proposals of general interest to its clients.

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As a threshold matter, ISS would like to commend the Commission for its recognition of the need for comprehensive revisions to the federal proxy rules (the "Proxy Rules") and for its efforts in the Proposing Release to facilitate securityholder communications and reduce the costs associated with proxy solicitations. ISS believes the Proposing Release constitutes a meaningful initial step towards full and balanced proxy reform.

In this regard, ISS strongly supports all four proposals contained in the Proposing Release. In particular, however, we welcome the Commission's acknowledgement of the unique function of shareholder advisory services, like ISS, as participants in the solicitation process, and we urge that the

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Commission adopt the first proposal with its specific exemption for such providers of shareholder advisory services. We have long believed that our activities were not within the rationale that previously justified close Commission oversight of proxy related communications.[1/] The policy behind the filing requirements of the Proxy Rules contemplates concerns raised by the participation of solicitation firms acting as paid agents for corporations and for sponsors of securityholder resolutions and dissident slates of directors. The Proxy Rules were therefore designed to regulate persons and entities with a financial stake in the outcome of the shareholder vote. Organizations like ISS, which provide voting information, but which are not the sponsor's agent, were never intended to be covered by the entire panoply of the Proxy Rules.

In addition, while ISS services are generally available to the public, they are only cost-effective for institutional investors. The sophistication and resources of large institutional investors have often been noted by the Commission in establishing that disclosures and other protections required for individual investors are not necessary for them.[2/] The market is, and will continue to be, the best discipline for ISS products. If ISS creditability is

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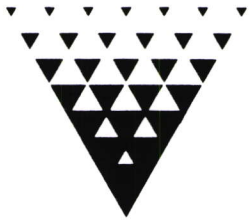
1/ See Letter from Nell Minow, General Counsel, Institutional Shareholder Services, Inc. to Ms. Cecilia D. Blye, Special Counsel, Securities and Exchange Commission, Division of Corporation Finance (Nov. 23, 1988); Letter from Nell Minow, General Counsel, Institutional Shareholder Services, Inc. to Ms. Cecilia D. Blye, Securities and Exchange Commission, Division of Corporation Finance (May 11, 1988).

2/ See, e.g., Revisions to Rules Regulating Money Market Funds, Securities Act Release No. 6870 [1990 Transfer Binder] Fed. Sec. L. Rep (CCH) ¶ 84,611 at 80,961 (July 17, 1990); Order Approving Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval to Amendments to Basket Trading, Exchange Act Release No. 27382, 54 Fed. Reg. 45,834, 45,848 (1989); Resale of Restricted Securities, Securities Act Release No. 6806 [1988-89 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 84,335 at 89,533-39 (Oct. 25, 1988).



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tainted by bias or unsupported conclusions, it will have no customers. Moreover, ISS materials remain subject to the antifraud proscriptions of Rule 14a-9, which, together with our need for credibility as a commercial matter, provide more than adequate incentives for us to issue carefully researched and fully documented analyses, and more than adequate remedies if we fail to do so. For each of these reasons, ISS has every incentive to continue to provide objective, reliable, and truthful information. Unlike the partisans in proxy solicitations, ISS has no incentive to obfuscate or use incendiary language. It was that risk which gave rise to the extraordinary measure of prior restraint with regard to proxy solicitation materials circulated by parties. In short, the nature of ISS analyses, and that of our clients, is such that proxy filing and disclosure requirements are not necessary, and as the first proposal in the Proposing Release proscribes, should not be required.

As a final point regarding the first proposal, ISS respectfully requests the Commission's concurrence that ISS and other qualified shareholder advisory services will be exempt from liability under Rule 14a-9 for the content of issuer supplied materials included in our publications. ISS as a matter of practice provides issuers with draft copies of its proposed communications containing its proposed recommendations and invites issuers to supply it with correcting information. Sometimes issuers have asked that ISS include in its memorandum concerning the issuer the issuer's comments on ISS's discussion and recommendations. ISS does not have the facilities to investigate or pass judgment on the accuracy or completeness of such an issuer submission, and the extent to which it might be liable under Rule 14a-9 for any fraudulent statements or fraudulent omissions from such material is uncertain. As a result, ISS has been reluctant to include such material in its communications to its subscribers, despite its considerable value to shareholders in giving them a chance to see management's response to our analyses.

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ISS believes that informed voting decisionmaking will be facilitated if an issuer's response to its proxy analyses and voting advice can be incorporated into its products. Securityholders will then have the dual benefit of ISS's objective analysis and advice coupled with the issuer's critique thereof. Since the issuer's comments will be published verbatim, and only upon prior approval by the issuer, there is no risk that ISS's presentations of such information will be false or misleading. We, therefore, urge that the

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Commission make clear as part of its final rule on this matter that shareholder advisory services may include and distribute such issuer statements to their customers free from the Rule 14a-9 antifraud prohibitions (which of course will continue to apply to the issuers who provide the information to us).

ISS also supports the second and third proposals in the Proposing Release. By eliminating most of the predissemination filing requirements and the nonpublic filing status for preliminary proxy materials, greater ease of communication for all parties engaged in solicitations is generated, while timing and compliance costs are diminished. The second and third proposals also establish a more level playing field between registrants and securityholders with respect to the filing and processing of proxy materials.

In response to the Commission's request for "[s]pecific comment . . . with respect to the appropriateness of eliminating preliminary filing and confidential treatment of proxy statements and other soliciting materials . . . in the context of . . . [certain] types of solicitations," ISS would like to address two issues raised. First, ISS urges strongly that soliciting materials relating to election contests and other contested solicitations should not be subject to preliminary filing and review requirements (the "Requirements"). The adverse interests of the parties provide sufficient protection to ensure each side's materials are efficiently and effectively monitored for adequacy and truthfulness. In addition, the elimination of the Requirements helps reduce the advantage afforded registrants by Rule 14a-6(a) which dispenses with preliminary review of "plain vanilla" proxy statements. No similar exclusion is currently available for securityholders' preliminary proxy statements to be used in soliciting on behalf of a securityholder's Rule 14a-8 proposal. The removal of the Requirements also relieves commentator concerns regarding the inconsistent quality and timeliness of Commission's staff review of securityholder soliciting materials, particularly in the case of multiple registrant proposals. The Proposing Release's second and third proposals should correct these imbalances.

Second, ISS also believes nonexempt securityholder proposals subject to Rule 14a-8 should be free from the Requirements. We agree with other commentators that Rule 14a-8, as currently in effect, provides an unfair advantage to registrants. At present, registrant's materials which include

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comments in opposition to securityholders' proposals contained therein, are not subject to the Requirements. In contrast, a proponent of a Rule 14a-8 proposal, who wishes to solicit independently, must file separate soliciting materials in preliminary form and wait ten days for dissemination. The Proposing Release's first proposal would alleviate this disparity for most securityholder solicitations by exempting them from the Requirements. The Proposing Release's second and third proposals, however, should be designed to protect those nonexempt solicitations from the same inequality.

Finally, ISS also supports the Proposing Release's fourth proposal. ISS believes this proposal will establish greater accessibility to the shareholder list, and consequently limit management's present ability to unfairly control the timing and efficiency of communication between shareholders.

ISS agrees with the Commission's statement in the Proposing Release that "the ability to reach other securityholders is a key factor in effective communication with securityholders by any other securityholder who may wish to engage in a proxy solicitation." Under current Rule 14a-7, the choice of whether to produce a securityholder list or mail the requesting securityholder's proxy materials resides exclusively with the registrant. In addition, if the list is provided, it need include only names and addresses of record holders, excluding beneficial holders.

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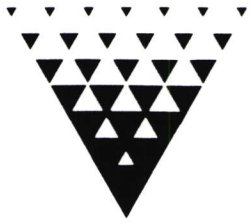
Thus, Rule 14a-7, in its present form, confers substantial authority upon issuers over securityholder communications. First, if an issuer elects not to provide the shareholder list, it is able to maintain some control over the timing of and the efficiency with which securityholder communications are disseminated. Second, if the issuer elects to provide a securityholder list, it may impose such impediments that a requesting securityholder is left with no other option than to pursue the list through litigation or allow the issuer to mail the materials. Last, when an issuer ultimately delivers the securityholder list, it need only do so with regard to record holders, even when the registrant has information as to the ultimate beneficial owners. All of these factors produce delays and added expense to securityholders' efforts to communicate with each other, and thereby effectively undermine the ability of soliciting securityholders to provide others with timely information bearing on their proxy voting decisions.



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ISS favors a revision of Rule 14a-7 to shift to the requesting securityholders the right to elect to obtain the securityholder list, or to have the issuer mail the requesting securityholder soliciting materials, within five business days. In addition, ISS believes access to the securityholder list and the list's required contents should be as expansive as is reasonably possible. In this regard, ISS does not favor limiting access of the list to record holders, or the imposition of minimum share ownership or holding period requirements. ISS, however, does favor mandating issuer disclosure of beneficial ownership information in its possession or such as is reasonably available. ISS believes the fourth proposal's change in the regulatory approach to securityholder lists should aid in facilitating the dissemination of material information to securityholders by reducing both the time and expense frequently encountered in obtaining such lists and thereby further ensure an informed voting decision.

We hope you find the above comments useful in your consideration of the final rule. If the SEC should decide to hold hearings, we ask to be permitted to present oral testimony. If we can be of any other assistance, please do not hesitate to call.

Yours very truly,

Nell Minow

Nell Minow
President

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