James E. Buck
Secretary

March 31, 1983

Mr. George A. Fitzsimmons
Secretary
Securities Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

File No. S7-954

Dear Sirs:

The Exchange welcomes this opportunity to respond to the Commission's Release No. 34-19291 (the "Release") which addresses the subject of communications between issuers and the beneficial owners of securities registered in nominee name. The Release is the third in a series of releases to be included in the Commission's ongoing Proxy Review Program and is based on the recommendations included in the final report of the Advisory Committee on Shareholder Communications dated June, 1982 (the "Report").

The distribution of proxy material to beneficial owners of securities held in "street" or in other nominee name is presently governed by Rules 14a-3(d) and 14b-1 under the Securities Exchange Act of 1934 (the "Exchange Act").

New York Stock Exchange, Inc.
Eleven Wall Street
New York, New York 10005

In the Release, the Commission proposes a number of changes in these rules and an accompanying change in Rule 17a-3 under the Exchange Act which currently sets forth record keeping requirements for broker-dealers. Specifically, the Release proposes the following changes in the Commission's rules under the Exchange Act:

(1) Currently paragraph (d) of Rule 14a-3 provides that, if the issuer knows that securities entitled to vote at a meeting for which the issuer intends to solicit proxies are held of record by a broker, dealer, bank or voting trustee, or any other nominee, the issuer must inquire of such record holder at least ten calendar days prior to the record date of the meeting and ask whether other persons are the beneficial owners of such securities. In its inquiry, the issuer must ask the number of copies of the proxy and other soliciting material necessary to supply such material to beneficial owners. In the Release, the Commission proposes amending paragraph (d) so that the inquiry required by that paragraph must be made at least twenty calendar days prior to the record date instead of the current ten calendar days. In addition, a new provision would be added to paragraph (d) requiring the issuer to include in its inquiry notice of its record date and to mail a copy of its inquiry to the Commission at the time it is sent to the record holder.

(2) The Commission proposes to add to paragraph (b) of Rule 14a-3 a provision which would, absent an applicable state law requirement, excuse issuers from being required to send annual reports or proxy statements to a security holder if such materials for two consecutive annual meetings have been mailed to that security holder's address of record and have been returned undeliverable.

(3) The Release proposes that Rule 14b-1 be amended to require that brokers respond to the inquiry made of them by issuers as referred to in (1) above no later than seven business days after receipt of the

issuer's inquiry. Currently, the broker-dealer is merely required to respond to the inquiry "promptly".

(4) The Release also proposes to amend Rule 14b-1 so as to require the broker who receives proxy material or annual reports from the issuer for remailing to beneficial owners to effect that mailing no later than four business days after receipt of such material. Currently, the rule simply requires the broker to mail the material on to the beneficial owner "promptly".

The Exchange supports each of the proposed rule changes described above. Insofar as they eliminate ambiguous provisions in the current rules and replace them with specific time periods, they seem reasonable and should add a desirable element of certainty to the rule provisions. The proposal that a copy of the issuer's inquiry to record holders be sent also to the Commission seems appropriate. If adopted, it would assure a single, reliable source from which interested parties could obtain record date information as to the stockholder meetings scheduled by all issuers. No such single source exists today.

The proposal which would, absent an applicable state law requirement, excuse an issuer from having to send annual reports or proxy statements to a security holder if such materials for two consecutive annual meetings have been mailed to the security holder's address of record and have been returned undeliverable, is a commendable effort to avoid the expense of repeated mailings to incorrect

addresses. As to this proposal, however, the Exchange wonders whether it employs the most appropriate test. Logically, the exemption should not apply if some interim mailing to the security holder was received at the address of record although material for the last two annual meetings was not. Perhaps the proposal should be amended to provide that further mailing would be excused, where state law permits, whenever all mailings by or on behalf of the issuer over a period of twelve months have been returned undeliverable. The Exchange also suggests that the rule change should be drafted in such a way as to make it clear that where a new address of record is furnished to the issuer, the issuer's obligation to send annual reports or proxy statements is reestablished.

In addition to the proposals discussed above, the Release also proposes:

> (i) to amend Rule 14b-1 to add a new provision requiring brokers, on request of the issuer and assurance of payment of reasonable expenses, to provide the issuer with the names, addresses and securities positions of consenting customers whose securities are held of record by the broker or its nominee; and
>
> (ii) to add a new requirement to Rule 17a-3(a)(9) under the Exchange Act, which would require a broker-dealer to maintain a record with respect to each securities account for which securities are held in nominee name, which record would state whether or not the beneficial owner consents to disclosure of such

owner's identity, address and securities positions to the issuers.

Conceptually, the Exchange agrees with the proposition that issuers should have an efficient and economic method of identifying the beneficial owners of its securities which are held of record in nominee name, provided, of course, that the beneficial owner consents to such identification. As the Commission recognizes, the difficulty with the proposition lies in constructing a method which is fair to all concerned (issuers, beneficial owners and nominees), is feasible and can be implemented at a reasonable cost commensurate with the benefits which might be expected to result.

Under the proposals included in the Release, the currently existing procedures for the dissemination and voting of proxies would remain in place. However, each broker-dealer registered under the Exchange Act would be required to solicit each customer for which it maintained a securities account. The customer would be asked whether it consented to the disclosure of its name, address and securities positions to each of the issuers of securities which are held of record for the customer by the broker-dealer as nominee. The broker-dealer would be required to provide an issuer, upon request and assurance of payment of

the broker-dealer's direct and indirect reasonable expenses, with names, addresses and securities positions, compiled as of the issuer's record date, of all consenting beneficial owners of the issuer's securities held of record by the broker-dealer as nominee. Finally, in order to assure that records of consenting beneficial owners are maintained and preserved by broker-dealers, the new proposals would require the broker-dealer to make and maintain, with respect to each account for which securities are held by it in nominee name, information concerning whether or not the beneficial owner consents to disclosure of its identity (name and address) and securities positions to issuers. The Commission's proposals with respect to identification of beneficial owners raise a number of serious questions which need to be resolved before the proposals are adopted.

First, the costs of implementing the proposals could be very substantial. Under the proposal, each registered broker-dealer which carries securities accounts would have to communicate with each of the securities customers for which it holds securities in "street" or other nominee name. In that communication, the broker-dealer would ask whether or not the customer consents to the disclosure of its name, address and securities positions to

issuers which request such disclosure from the broker-dealer. One estimate of the cost of this initial mailing to customers is about fifty cents per customer, an amount that seems reasonable when one includes postage costs, including return postage, for each customer. The 1982 Yearbook published by the Securities Industries Association ("SIA") lists some 268 SIA members carrying a total of 13,200,000 securities accounts. If the fifty cents per customer solicitation cost is applied to this population, the initial mailing would cost $6,600,000. If we assume a 50% rate of response to the first mailing, and if a second mailing to non-responding customers is required, the second mailing would cost $3,300,000, bringing the total cost of just these two mailings to nearly $10,000,000. Added to the cost of soliciting the existing customer population would be the cost of entering the information received from consenting and nonconsenting customers in the broker-dealer's records. In some cases this would be a manual operation, but in many others it would involve the development of computer software programs to permit the broker-dealer to readily access and easily update his records in the future. Finally, there would be the cost of accessing the records upon the request of a given issuer and preparing the requested printout.

As the Commission knows, reliable cost estimates have been extremely hard to come by. The Report describes efforts by the Advisory Committee on Shareholder Communications to obtain estimates of costs. In particular, the Report states that the American Bankers Association asked respondents to estimate the cost, among others, of identifying consenting and nonconsenting beneficial owners. Estimates were received from 18 banks. The range of those estimates was "enormous". One bank with 8,000 accounts holding securities of 2,500 issuers estimated start-up costs at $44,000, while another with 25% fewer accounts holding securities of 3,000 issuers estimated start-up costs at $331,000. The Report found it impossible to resolve these huge discrepancies. (See Report, pp. 64-66)

A carefully considered analysis and estimate needs to be made of the total cost to broker-dealers of developing the records they would need in order to permit them to provide issuers with the names, addresses and securities positions of consenting shareholders. It may very well be that issuers would not be willing to share among themselves the costs involved, assuming that some equitable means of allocating those costs among issuers could be devised. Issuers might conclude that the anticipated benefits of

learning the identities and securities positions of beneficial owners of their securities do not justify the expenditure by them of significant amounts. Furthermore, which issuers would pay the costs of developing the initial data base? It would appear to be unfair to impose the full costs upon the first few issuers that request the information, but it may not be possible to predict beforehand which issuers would, in fact, request the information from any given broker-dealer. For its part, the Exchange questions whether the self-regulatory organizations are in a position to resolve these difficult problems by devising acceptable methods for identifying reasonable costs and allocating them fairly among issuers.

Other difficult problems are raised by the Commission's proposals on the identification of beneficial owners. The question of what should be determined to constitute consent is one of these questions. Clearly, beneficial owners have the right to remain unidentified if they wish. Specific consent by the customer should be required before the customer's identity and securities positions are disclosed to issuers. Mere failure by the customer to object to disclosure should not be sufficient. If this principal is adopted, the number of consenting

shareholders may, of course, be reduced. This in turn may reduce the perceived benefits of the entire program, but may not reduce the costs significantly.

Finally, the proposals could have an unfair and competitively adverse impact on securities broker-dealers. The proposal would apply only to broker-dealers registered under the Exchange Act. While the Release states the Commission is pursuing legislation to obtain authority to impose similar requirements on bank nominees, the current proposal would not apply to banks, trust companies, investment advisors and others who may hold securities of record in nominee name for unidentified beneficial owners. As a result, customers of broker-dealers might decide to withdraw their securities from broker-dealers and deposit them with banks, trust companies or other nominees which can be expected to safeguard the shareholder's anonymity.

In addition, since the Commission's proposal would not affect banks and other non-broker-dealer nominees, it will fall far short of achieving the benefits which might result from a full scale program. According to the Depository Trust Company, as at January 31, 1983, the depository held in nominee name some 27.4 billion shares of some 9,474 common and preferred stocks. Of this total, 14.9

billion shares or 54.4% was held for participating banks while only 12.5 billion shares or 45.6% was held for brokers. In terms of market value, the shares held for banks represented 76.6%, or $665.1 billion, of the total market value of all shares held.

In view of all of these concerns, the Exchange suggests that the Commission not implement its proposals relating to the identification of beneficial owners at this time. Rather, the Exchange suggests that there should be a further evaluation of the probable costs and expected benefits that would accrue to issuers if a program providing for identification of beneficial owners of securities held of record by all sorts of nominees, including banks and trust companies as well as broker-dealers, were developed. If the perceived benefits are determined to justify the costs involved, some reasonable means of identifying those costs and allocating them in some equitable fashion among issuers should be developed.

The Exchange hopes these comments may be helpful to the Commission. If the Commission or its staff have any questions regarding the Exchange's comments, please contact Donald L. Calvin, Executive Vice-President of the Exchange.

Very truly yours,