United States Senate
COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS
WASHINGTON, DC 20510-6075

May 10, 1988

Mr. David S. Ruder
Chairman
Securities and Exchange Commission
450 Fifth St., N.W.
Washington, D.C. 20549

Dear Chairman Ruder:

The Securities and Exchange Commission is currently considering a proposed rule that would prohibit a company's common stock and equity securities from being listed on a national exchange, or reported on a quotation system, if the company takes any action to reduce the voting rights of existing shareholders. This so-called "one-share one-vote" rule would be applied retroactively to actions taken on or after May 15, 1987, if the rule is adopted as originally proposed in June, 1987. I am writing this letter to express my view that the Commission should not adopt this proposed regulation.

The question of imposing a one-share one-vote requirement is clearly a matter that should be resolved by the Congress and not by an administrative agency. Congress has not abrogated its role in this regard. During the Senate Banking Committee's recent mark-up of S. 1323, the Tender Offer Disclosure and Fairness Act, considerable time was spent debating the merits of a one-share one-vote provision. Ultimately, the Committee determined that the Securities and Exchange Commission should study existing regulations and practices relating to shareholder voting rights, and report to Congress on its findings by October 1, 1988. While this bill has not yet been passed by the full Senate, Senator Proxmire has stated publicly his intent to bring this measure to the floor shortly. In the meantime, on March 17 of this year, the Senate Banking Committee held an extensive hearing solely on the one-share one-vote question. In the House of Representatives, legislation on this subject has also been introduced, and is being considered by the Committee on Energy and Commerce. In light of this Congressional activity, a Securities and Exchange Commission decision to promulgate its one-share one-vote rule would be totally inappropriate as well as an unnecessary intrusion on Congressional prerogatives in this area.

In addition, I am concerned about the implications of this proposed rule on the rights of the States to establish their own policies with respect to shareholder voting rights. Recently, in the case of CTS Corp. v. Dynamics Corp., the Supreme Court stated that "no principle of corporation law and practice is more firmly established than a State's authority to regulate domestic corporations, including the authority to define the voting rights of shareholders." The

proposed regulation would have the effect of broadly preempting the rights of the States to exercise their traditional authority over shareholder voting rights. Such a broad preemption of State authority by a regulatory agency would be inappropriate.

Finally, I am also deeply troubled by the retroactive effect of this regulation, if adopted as proposed. Retroactive laws and regulations, by their very nature, are patently unfair to those who engaged in activities that were permissible at the time they were engaged in, but which were later made impermissible. I understand that several companies have taken actions since May 15, 1987, to adjust the voting rights of their common stockholders. These actions were taken with the approval of the shareholders of the companies involved. To determine now that these adjustments have to be rescinded in order to be able to trade these shares on a national exchange or through a quotation system would work an unjust hardship on the companies and shareholders involved that cannot be justified by any legitimate policy concern. I understand that even the New York Stock Exchange does not feel that such a rule would need to be retroactive.

I also understand the New York Stock Exchange has pending before the Commission a proposed change to Section 313.00 of the NYSE Listed Company Manual that would permit listed companies to adopt disparate voting rights plans if certain standards are met. My objections to the Commission's proposed rule do not apply to the NYSE proposal so long as the NYSE proposal is not applied retroactively. I understand that the NYSE would not object to such a limitation to its proposal.

In light of these considerations, I believe that the Commission should not go forward with its rulemaking, but instead should defer to the Congress and the States to establish the appropriate guidelines with respect to shareholder voting rights.

Sincerely,

Jake Garn
Ranking Republican Member

JG:rnn