TEXACO
INC.

VIA: FEDERAL EXPRESS

2000 WESTCHESTER AVENUE
WHITE PLAINS, N.Y. 10650

September 20, 1991

Mr. 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 Security Holder Communications

Dear Mr. Katz:

Texaco Inc. appreciates the opportunity to comment on the Commission's proposals to amend the proxy rules regarding security holder communications. We believe that these proposals, if adopted, would effect a profound change in the regulation of communications among security holders, with potential far-reaching effects upon corporate governance in this country, upon the international competitiveness of U. S. companies and the pension funds that invest in them, upon the effectiveness of this country's equity markets as a vehicle for U. S. companies to raise capital and upon the confidence of investors, particularly small investors, in these markets. For these reasons, and for the additional reasons discussed below, Texaco is opposed to the adoption of these proposals, which will effect unnecessary and potentially damaging changes in a system that has worked well for almost sixty years.

1 Exemption of "Disinterested Persons"

This proposal would exempt certain shareholders, called "disinterested persons", seeking to influence the outcome of a vote from complying with any of the proxy rules other than the rule prohibiting fraud.

It is patently nonsensical that large shareholders, with millions of dollars invested in a company, should be called "disinterested" and deemed to have no "material economic interest" in the company. This concept completely ignores the very real economic interest these substantial investors have in the companies in which they invest and in their decisionmaking process to buy or sell shares or future positions in shares of these companies. It is equally impossible to reconcile the "trustee" and "fiduciary" position of the proponents of these revisions with a position of "disinterest".

Furthermore, the desire of these shareholders to meet and discuss these companies among themselves, to have access to the management of these companies and to submit proposals to these companies, all without public disclosure, together with their touting the successes of their initiatives, evidences an economic interest well beyond that of other shareholders. We believe that if these proposals were adopted, it would be more appropriate to call these persons "privileged shareholders".

The issue presented by this proposed amendment is quite simple: whether the proxy rules should be changed so as to enable the solicitation activities of large institutional holders to be carried out in secret discussions with other large holders, without disclosure of their activities to other stockholders, the marketplace or the affected corporation, contrary to the basic philosophy of the securities laws of openness, fairness and confidence in the market. We believe that the answer is obviously "no."

The current shareholder communication rules were adopted by the Commission in the 1950's to further a stated objective of the Securities Exchange Act of 1934 of promoting full and fair disclosure to shareholders and to the market. This objective was based on a belief that full disclosure of relevant information is necessary to prevent abuses by both management and large investors and to foster an orderly and fair trading market -- a market in which investors and potential investors could have confidence because of its transparency thus allowing companies to efficiently raise capital in the public marketplace. Taken as a whole, we believe that system, which has fostered openness and fairness and encouraged transparency and confidence in the market, has worked very well.

Obviously, any change in the current regulations which would have the effect of undermining the public's confidence in the public market for securities would have a serious adverse effect upon the ability of registered companies to raise capital. This, in turn, would seriously erode their ability to compete in the global marketplace, to the detriment of these companies and the U. S. economy. The serious erosion of the market value of companies is what fuels takeover mania. Adoption of the proposed rule would certainly have just such an effect.

No one disputes the fact that institutional investors control a vast amount of equity securities of U. S. companies and that this control is growing. To cite a few well-known statistics:

a. pension funds currently have $2.0 trillion of assets.

b. the combined investment activity of institutional investors, including pension funds, accounts for more than half of the daily stock market volume.

c. among the largest 500 companies, institutional investors control in excess of 50 percent of the outstanding shares.

d. thirty selected pension funds and investment managers combined control 15.5 percent of the 10 largest companies, and it is predicted that this will rise to almost 30 percent by the year 2000, and that by the same year pension funds could hold two-thirds of the equity capital of all U. S. businesses.

It is, therefore, clear that the power of these institutional stockholders should not be underestimated, and may well call for more, not less, public scrutiny of their activities. This is particularly true where the financial intermediaries who manage these funds on behalf of others may have, by virtue of state and local laws and regulations which are imposed upon them, interests which diverge from the financial interests of their beneficiaries. If these funds are not required to disclose to their beneficiaries (1) how they have voted the shares they hold (because of the confidential voting they have championed) or (2) whether they have reached agreement with other stockholders on how they will vote, most reasonable checks on their authority will have disappeared.

Public pension funds, in particular, are subject to political influence by state politicians, many of whom are appointed rather than elected, by special interest groups and to the political ambitions of their leadership. Furthermore, managing a firm in accordance with currently politically popular programs may not necessarily be in the best long-term interests of the company's shareholders.

Equally troublesome is that the ability of these large institutions to communicate and coordinate investment activities in secret would enable them to trade on information not generally available to the investing public, particularly the small investor, including coordination of collective attitudes regarding their continued interest in the ownership of the company. While this information about the investment intentions of other large investors is not necessarily "inside information" in the traditional sense, their meeting and agreeing on a course of action is certainly material, non-public information which would give these large investors a significant and unfair advantage over other participants in the marketplace, if it is not disclosed. Nothing would more quickly erode investor confidence in the market. And if investors leave the equity markets because they view it as unfair to them because of their lack of access to all important information, the traditional means of companies raising equity capital becomes seriously compromised.

Not only would the proposed rule poison the market by allowing an oligopoly of powerful investors to trade information in secret, it would also create a situation where information about a company, some of which may not be accurate, is allowed to circulate without any opportunity for the Commission to police it or the companies to refute it. By requiring that management's and shareholders' opposing views be made public and "tested by the crucible of public debate," exaggeration and misinformation are exposed, and shareholder democracy is promoted, not the contrary, as the proponents assert. Some proponents of change would suggest that if misleading, exaggerated or inaccurate solicitations cause harm, then those harmed can seek legal redress. It has been repeatedly proven that it is not possible to "un-ring the bell," and that the right to collect damages or an apology long after the battle has ended is an empty right.

Last year, then Commissioner Lochner, in a speech entitled "Improving Corporate Governance for the Nineties: The Role of Institutional Investors and Proxy Reform," discussed proposals then being made to ease restrictions on communications among institutional investors. Commissioner Lochner concluded as follows:

> "I believe that we need to proceed cautiously in this area, because there are many more questions than answers at this juncture. I'm not sure that we have had enough experience with institutional involvement in the proxy process to reach any firm conclusions on this issue. Indeed if recent events are any indication, it would appear that institutional investors have substantial leverage with management even without any change in the current proxy rules....

> Another question is whether providing large institutional shareholders with greater power to influence Boards would improve corporate financial performance? Rather, might not institutions use their new found muscle, perhaps, to break up and sell off companies in order to yield higher short term returns. Would such a result be good for the economy?...
>
> Is there systematic evidence that institutional investors are better managers, or pickers of management, or long term planners, than corporate managers or other shareholders?...
>
> Accordingly, it seems to me that before we completely revamp the proxy system or conclude that institutions should have greater influence over boards, we need first to reach agreement on what a good board is and how to create a good board. These are difficult subjects, not amenable to quick and easy judgments."

We agree with former Commissioner Lochner; the Commission needs to carefully consider whether such a dramatic departure from the intended purpose of the shareholder communication rules - full, fair and accurate disclosure - is in the best interests of the financial markets or of the investing public whom these rules were created to protect. We do not believe that it is.

2 <u>Access to Shareholder List</u>

This proposal would impose an S.E.C. requirement that management furnish any requesting security holder with a shareholder list, including beneficial ownership information, within five business days of the request.

The right of a stockholder to obtain access to his corporation's books and records, including its list of stockholders, is governed solely by the laws of the corporation's state of incorporation. Therefore, there are not a large number of conflicting state laws governing a particular corporation. Accordingly, there is no compelling need for the uniformity which pre-emptive Federal regulation would bring.

In addition, there is already a large body of well-tested precedent in most states on the subject of the right of a stockholder to obtain a list of stockholders and other corporate records, and there are in place courts, such as the Delaware Chancery Court, with ample experience in dealing with the issues involved in these kinds of cases when a legitimate need has been demonstrated.

Finally, many investors do not desire to have their identities as stockholders disclosed, unless there has been an appropriate demonstration of a valid reason for such disclosure.

Given the above, we perceive no need to federalize this state law matter. On the contrary, we believe that such a rule would be an unnecessary, and perhaps an unlawful, intrusion into state regulation of corporate governance, and that litigation which is now brought in state courts would instead then be brought as matters of first impression in federal courts, with additional costs and uncertainties as a result.

Therefore, we would oppose adoption of this proposed amendment.

3

Elimination of the Pre-Filing of Soliciting Materials

This proposal would eliminate the requirement to submit most proxy materials to the S.E.C. for their review prior to distribution, and, as to those proxy materials that would have to be pre-filed, they would be publicly available upon filing.

In 1988, Texaco was involved in a proxy contest with a dissident shareholder. Therefore, we are intimately familiar with the requirement that all soliciting materials, including letters to shareholders and newspaper advertisements, be pre-cleared by the S.E.C.'s Division of Corporation Finance. Based upon this experience, we firmly believe that it is clearly in the interests of the markets and of the majority of shareholders that the S.E.C. review in advance all materials to be distributed to insure that they are factually and legally correct.

The possibility that a court may ultimately determine that proxy materials are false or misleading will not, in far too many cases, act as a sufficient restraint against those intent on making compelling (although not totally candid) arguments to the shareholders in the heat of a proxy contest. Even injunctive relief and the award of damages would come too late to prevent the harm that would be caused by the dissemination of false and misleading proxy materials.

Moreover, the proposal would shift the task which overall the S.E.C. has done well to an overcrowded court system and substitute expensive and extensive litigation for the present regulatory procedures, which have worked quite well. Again, the danger in many cases is that the damage will have irretrievably been done by the time a court is given the extremely difficult job of trying to correct the wrong. We believe that prior S.E.C. review of proxy materials does help to prevent this type of impetuous conduct without impairing in any significant way the rights of both sides to make their views known in a timely manner.

Therefore, we believe that the best interests of the shareholders is served by the current system, although we would certainly support an effort by the Commission to develop a series of form letters and advertisements, such as "stop, look and listen" letters, which the Commission will be deemed to have pre-cleared.

Furthermore, we do not believe that it would be advisable to make available to the public materials which have been pre-filed in preliminary form. They should be kept confidential until they have been publicly disseminated by the filer. Premature public disclosure would be unfair to the party that is attempting to pre-clear materials well in advance of their intended use, and it would most likely have the effect of prompting all parties to delay filing their materials until the last minute in order to avoid giving their opponents the opportunity to develop materials in opposition. Immediate public disclosure would also place greater pressure on the S.E.C. Staff, by subjecting them to comments and communications from third parties trying to influence the Staff's review of the materials. Furthermore, if the preliminary materials are, in fact, found by the Staff to be misleading, and, therefore, never disseminated by the filer in the form in which they were pre-filed, these materials would have already been widely distributed, even though they were never cleared by the Staff. The fact that these materials were labelled "Preliminary" will do little to prevent the harm which their premature distribution will surely have caused. Once again, it would not be possible to "un-ring the bell."

Therefore, we oppose the elimination of the pre-filing requirement for proxy soliciting materials.

Finally, we urge the Commission to withhold taking final action on any of these proposals until it has published and received public comment on all of the other issues relating to the proxy rules which the Commission now has under consideration. This will afford the public and the Commission the opportunity to consider the various elements of this subject matter in a comprehensive manner, and to test how one set of changes might actually impact the markets in light of other proposed changes.

Thank you for giving us the opportunity to provide the Commission with our comments on this very important subject.

Very truly yours,

Stephen M. Turner
Senior Vice President and
General Counsel

Allen J. Krowe
Senior Vice President and
Chief Financial Officer

s:proxam

cc: The Hon. Richard C. Breeden
Chairman
Securities and Exchange Commission
Mail Stop 6-1
450 5th Street, N.W.
Washington, D.C. 20549

The Hon. Edward H. Fleischman
Commissioner
Securities and Exchange Commission
Mail Stop 6-5
450 5th Street, N.W.
Washington, D.C. 20549

The Hon. Mary L. Schapiro
Commissioner
Securities and Exchange Commission
Mail Stop 6-7
450 5th Street, N.W.
Washington, D.C. 20549

The Hon. Richard Y. Roberts
Commissioner
Securities and Exchange Commission
Mail Stop 6-8
450 5th Street, N.W.
Washington, D.C. 20549