

TARAS R. PROCZKO  
VICE PRESIDENT  
CORPORATE COUNSEL AND SECRETARY  
312/357-5121  
312/357-5807 FAX

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01 DEC 10 PM 5:10

December 7, 2001

Via Overnight Courier

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549

Public Avail. Date: 1/17/02 0204200209  
Act Section Rule  
1934 14(a) 14a-8

Re: Securities Exchange Act of 1934 - - Rule 14a-8(i)(1)

Shareholder Proposal Submitted to Hartmarx  
Corporation by John R. Meinert

Ladies and Gentlemen:

On behalf of Hartmarx Corporation, a Delaware corporation (the "Company"), I am submitting, in my capacity as counsel to the Company, this letter pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934 (the "Exchange Act"). On October 25, 2001, the Company received from Mr. John R. Meinert a shareholder proposal including a supporting statement (the "Proposal") for inclusion in the Company's proxy materials (referred to herein as the "Proxy Statement") for the Company's 2002 annual meeting of the shareholders. The Proposal provides:

"Resolved: That the stockholders of Hartmarx Corporation hereby require its Board of Directors to redeem immediately the Rights distributed under its Stockholder's Rights Plan (the "Poison Pill") and take all steps necessary to redeem, repeal and eliminate its Poison Pill."

The Proposal was attached to a letter received by the Company on October 25, 2001 (a copy of which is attached hereto as Exhibit A).

For the reasons set forth below, the Company believes that it is entitled to omit the Proposal from the Proxy Statement in accordance with Rule 14a-8(i) under the Exchange

HARTMARX CORPORATION

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Act because the Proposal, under Delaware state law, is not a proper subject for shareholder action (Rule 14a-8(i)(1) under the Exchange Act).

The Company respectfully requests that the staff of the Division of Corporation Finance of the Securities and Exchange Commission (the "Staff") confirm that it will not recommend any enforcement action against the Company based on the omission of the Proposal from the Proxy Statement. To the extent that exclusion is requested under Rule 14a-8(i)(1) and Rule 14a-8(j)(2)(iii) requires a supporting opinion of counsel to be provided, the "Grounds for Omission" section of this letter constitutes the supporting opinion of the Company's counsel. A copy of this letter is concurrently being sent to Mr John R Meinert.

The Company intends to file with the Securities and Exchange Commission definitive copies of the Proxy Statement on or about February 26, 2002, and to begin mailing shortly thereafter.

Pursuant to Rule 14a-8(j) under the Exchange Act, I enclose the following:

1. The original and five copies of this letter, which includes an explanation of why the Company believes that it may exclude the Proposal from the Proxy Statement; and
2. Six copies of the proposal letter.

#### *Grounds for Omission*

The Proposal may be omitted from the Proxy Statement pursuant to Rule 14a-8(i)(1) (Improper Under State Law) under the Exchange Act. Under Rule 14a-8(i)(1), a corporation may omit a proposal from its proxy statement "if the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization." The Company is organized under the laws of the State of Delaware and governed by the Delaware General Corporation Law ("DGCL").

The Proposal requires the Company's Board of Directors (the "Board") to redeem the rights (the "Rights") issued under the Company's Amended and Restated Rights Agreement (the "Shareholders Rights Plan") and repeal and eliminate the Shareholder

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Rights Plan itself. As submitted, the Proposal mandates action on a matter that is, under DGCL, committed to and within the discretionary authority granted to the Board, and which is therefore not a proper subject for action by shareholders.

Section 141(a) of DGCL states that "the business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board or directors, except as may be otherwise provided in this chapter or in its certificate of incorporation." Neither the Company's Restated Certificate of Incorporation (the "Certificate") nor DGCL limits or restricts in any manner the ability of the Board to redeem the Rights issued under the Shareholders Rights Plan. Furthermore, the Shareholder Rights Plan expressly vests the power to redeem the Rights with the Board. The Proposal would therefore constitute an exercise of power by the shareholders that is reserved to the Board under DGCL and under the terms of the Shareholder Rights Plan.

The Staff has frequently agreed that shareholder proposals that usurp the power of the board of directors of a company under applicable state law by mandating certain action may properly be omitted from the registrant's proxy statement under Rule 14a-8(i)(1). See Pancho's Mexican Buffet, Inc. (December 8, 2000); The Walt Disney Company (November 18, 1999); American International Group, Inc. (March 12, 1999) and Tandem Computers Incorporated (November 8, 1995). (For your convenience, copies of these No-Action letters are included in the Table of Authorities enclosed herewith.)

As the Proposal seeks to require the Company to take action which Delaware state law reserves to the sole discretion of the Board, it is not a proper subject for shareholder action. The Proposal, therefore, may be omitted from the Proxy Statement pursuant to Rule 14a-8(i)(1) under the Exchange Act.

Please acknowledge receipt of these materials by receipt-stamping the additional enclosed copy of this letter and returning it using the pre-paid, pre-addressed air courier packaging enclosed for this purpose.

Should the Staff disagree with my conclusion regarding the omission of the Proposal or should any additional information be desired in support of my position, I would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of its response.

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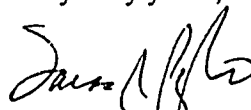
Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission

December 7, 2001

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If you wish any further information on this matter, please call me at 312 357-5321, or you may fax written materials to fax no. 312 357-5807.

Very truly yours,



Taras R. Proczko  
Vice President, Corporate Counsel  
& Secretary

TRP  
enclosures

John R. Meinert, 634 North Ironwood Drive, Arlington Heights, IL 60004, owner of 94,953 shares of the Company's common stock, has given notice that this proposal will be presented at the Annual Meeting:

Resolved: That the stockholders of Hartmarx Corporation hereby require its Board of Directors to redeem immediately the Rights distributed under its Stockholder's Rights Plan (the "Poison Pill") and take all steps necessary to redeem, repeal and eliminate its Poison Pill.

This statement has been submitted in support of the resolution:

The previous Poison Pill's expiration was January 31, 1996, and a majority of the shares voting at three Annual Meetings – 80% the third time in 1993 – requested redemption or submitting the Plan to a binding stockholder vote, but the Board took neither action. While not opposing the 1993 proposal, agreements with lenders signed after its submission required their consent; such request was promised in that proxy statement. However, instead of redemption or eliminating the Poison Pill upon expiration, the Board approved a new Poison Pill with less constraints on amendment powers, redeemable at one cent per Right (29 million would be only \$290,000) for 10 more years until January 31, 2006, without Stockholder approval, which would have been denied.

A substantial majority of anti-Poison Pill proposals are winning year after year despite Board opposition. I retired as Hartmarx Chairman in 1990, and now the Company, the times and financial situation are far different than when I signed agreements to distribute Rights. This Poison Pill is no longer necessary and is unattractive to existing stockholders and potential investors. Market value of the very substantial shares owned by directors, executives, employees and their benefit plans would be enhanced by removing obstacles to accumulating shares; studies support this, and this advantage is far more important than using the Poison Pill, designed to discourage or thwart unwanted offers, to "protect" Stockholders from losing control of the Company at prices the Board deems too low.

The Board's very important responsibilities would continue regarding all offers -- evaluating proposals, informing Stockholders of its negotiating efforts, recommending acceptance or rejection, and using its power to add directors and influence Stockholder approval by tailoring the best offer. Stockholders, well protected under Delaware laws, must have the right to decide on what they consider a "Fair Price" and meanwhile, purchases of Hartmarx shares should not be blocked by the Poison Pill, which the Board does not need to perform its duties.

The Board has good reason to permit Bakhsh/Traco shareholdings higher than the (15%) Poison Pill, while demonstrating its powers to dictate how much a stockholder can buy, accumulate, own or offer to buy, and to select directors. The Board would still be able to negotiate arrangements but without any Poison Pill diminishing Stockholder rights without Stockholder approval.

To enhance the value of the Company for its stockholders, it is important that you mark your proxy FOR this resolution.

*John R. Meinert*  
John R. Meinert

## TABLE OF AUTHORITIES

No-Action Letters

Pancho's Mexican Buffet, Inc. (December 8, 2000)  
The Walt Disney Company (November 18, 1999)  
American International Group, Inc. (March 12, 1999)  
Tandem Computers Incorporated (November 8, 1995)

Mr. Taras R. Proczko  
Secretary of the Company  
Hartmarx Corporation  
101 North Wacker Drive  
Chicago, IL 60606

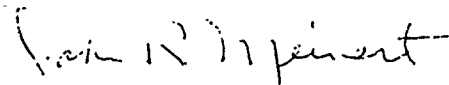
Dear Secretary Proczko:

The attached Stockholder Proposal is to be included in the Proxy Statement. I have owned the same 94,953 shares for many years, comprised of 79,445 shares registered in my name plus 15,508 shares shown on the attached statements, and will own them beyond the Annual Meeting, when I will present this Resolution.

The Board did not oppose the 1993 proposal which gained an 80% vote, compared to 64% in 1992 and 57% in 1991, but I need to know what will be stated in the Proxy Statement as well as any comments from the SEC.

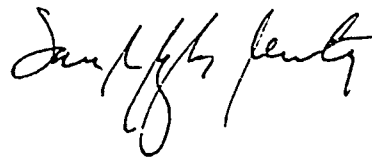
I think that removal of the Poison Pill should help, though improvements in sales and earnings are the most needed, to increase the market value of our Company's shares.

Sincerely,



John R. Meinert

Received by the Company this 25<sup>th</sup> day of October 2001.



Mr. John R. Meinert  
634 North Ironwood Drive  
Arlington Heights, IL 60004

RECEIVED  
OFFICE OF CHIEF COUNSEL  
CORPORATION FINANCE  
December 12, 2001  
02 JAN 11 PM 1:50

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Office of Chief Counsel  
Division of Corporate Finance  
Securities and Exchange Commission  
450 Fifth Street, N. W.  
Washington, D.C. 20549

SUBJECT: Shareholder Proposal Submitted to Hartmarx  
Corporation by John R. Meinert

Dear Chief Counsel:

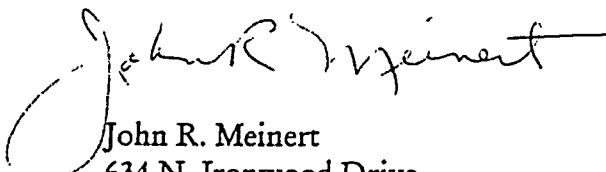
The attached December 7<sup>th</sup> request to exclude my Proposal cites Delaware law because "As submitted, the Proposal mandates action". My reason for using "require" is that the Board plans to ignore any "request" even if it wins, as it has three times (by as high as 80%)!

If you rule that my Proposal to avoid exclusion, must be changed to substitute "request" for "require", then I acquiesce, although reluctantly, due to the fact that the stockholders right to "require" is supported by much legal authority which has been cited for you in similar circumstances.

However, if you allow "request" -vs- "require", then please demand that the Company's opposing statement contain an admission that "require" was rejected by the company as it has no plans to accept the Proposal even if it gains the winning vote.

If you wish to discuss this matter, please call me at 773/693-4800.

Very truly yours,



John R. Meinert  
634 N. Ironwood Drive  
Arlington Heights, Illinois 60004

Six Copies Enclosed

copy to: Mr. Taras R. Proczko, Vice President, Corporate Counsel & Secretary  
Hartmarx Corporation  
101 N. Wacker Drive  
Chicago, IL 60606



January 17, 2002

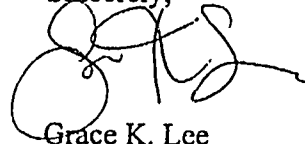
**Response of the Office of Chief Counsel  
Division of Corporation Finance**

Re: Hartmarx Corporation  
Incoming letter dated December 7, 2001

The proposal requires that the board immediately redeem the rights distributed under Hartmarx's rights plan and take all steps necessary to redeem, repeal and eliminate the rights plan.

There appears to be some basis for your view that Hartmarx may exclude the proposal under rule 14a-8(i)(1) as an improper subject for shareholder action under applicable state law. It appears, however, that this defect could be cured if the proposal is recast as a recommendation or a request to the board of directors. Accordingly, unless the proponent provides Hartmarx with a proposal revised in this manner within seven days of receipt of this letter, it is the Division's view that Hartmarx may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(1).

Sincerely,



Grace K. Lee  
Attorney-Advisor