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Opening Statement of
The Honorable Harold M. Williams, Chairman
Securities and Exchange Commission

at the

Commission's Consideration of Rulemaking Proposals Concerning Shareholder Communications, Shareholder Participation in the Corporate Electoral Process and Corporate Governance Generally, Announced in Securities Exchange Act Release No. 14970

The Commission is meeting this morning to consider the rulemaking proposals published for comment on July 18, 1978, in Securities Exchange Act Release No. 14970. At the outset, I would like to note that Commissioner Irving Pollack is not present today due to a long-standing commitment to represent the Commission at an important international conference. Commissioner Pollack has, however, reviewed the staff recommendations.

The proposals in Release No. 14970 would require additional disclosure in proxy statements in order to increase the information available to investors regarding the structure, composition, and functioning of boards of directors; resignations of directors; attendance at board and committee meetings; and the terms of settlement of proxy contests. Another proposal relates to the disclosure of voting policies and procedures of institutions subject to the proxy rules. Additionally, the Commission will consider the adoption of an amendment to the shareholder proposal procedures which would provide shareholder proponents with an opportunity to review management opposition statements prior to the mailing of the proxy materials.

Because of the significance of the proposals before the Commission this morning, and because of the intense public interest which they have generated, I want to preface our discussion with a few comments concerning the background and objectives of this rulemaking proceeding. The corporate governance inquiry of which these proposals are a part is so important an element of the Commission's work that any misunderstanding is likely to be harmful to both the Commission's efforts and, more importantly, to the corporate sector's ability to come to grips effectively with these difficult and complex issues.

In April of 1977, the Commission authorized its staff to institute a broad re-examination of the rules relating to shareholder communications, shareholder participation in the corporate electoral process, and corporate governance generally. The decision to undertake that study was based, in large part, on expressions of concern about the efficacy of existing mechanisms of corporate accountability, including proxy solicitations and the corporate electoral process. During the ensuing initial phase of the proceeding -- which included public hearings in four cities across the country -- more than 100 witnesses and 200 commentators, representing a broad spectrum of the

corporate community, shareholders, academics, and other interested persons, presented their views. The resulting file, which contains over 10,000 pages, reflects wide diversity of opinion with respect to the existence of weaknesses in corporate accountability and the means by which to strengthen it. There was, however, broad support for the general proposition that an effective and vigorous board of directors, able to exercise independent judgment, is an important element in corporate accountability.

Because of the complexity and variety of the issues raised, the Commission determined to proceed in several stages. As a first step, the Commission proposed the disclosure requirements which are the subject of today's meeting. The Commission also explained that publication of a comprehensive staff report on some of the more complex corporate governance questions--and possibly additional rulemaking proposals or legislative recommendations--would ultimately follow; the Commission, however, viewed the rulemaking initiatives in Release No. 14970 as embodying regulatory action which, while significant and far-reaching --and likely to generate intensive debate--was both within the scope of existing disclosure authority and responsive to the concerns articulated during the public hearing phase.

The proposals in Release No. 14970 evoked enormous public response. In total, almost 600 persons and organizations accepted the Commission's invitation to comment, and the resulting file, which is several feet thick, is, I am told, more extensive than any other in the Commission's history. I have personally read each of these letters, and am well aware of the thoughtfulness and constructiveness which characterize the vast majority of them. I am gratified and encouraged by the amount and level of reasoned concern expressed and take that concern as a manifestation of corporate responsibility which, if maintained, can do more than any government regulation to enhance board responsibility and corporate accountability.

The quality and volume of these responses underscore both the importance and the difficulty of the task which the Commission faces in determining what action to take on its proposals. While the Commission cannot, of course, undertake to premise quasi-legislative determinations, such as those before us today, solely on the views offered by commentators, those views do afford an essential opportunity for us to understand fully the impact and likely operation of proposed rules and to consider appropriate modifications.

By far the most controversial aspect of Release No. 14970 was the proposal that corporate director nominees be characterized in the proxy statement in which public shareholders are asked to vote for them as "management," "affiliated non-management," or "independent," as those terms were defined in the proposal. First, some have construed that concept--mistakenly--as signaling the Commission's desire to supplant state law or private sector initiatives toward developing effective mechanisms of corporate accountability. While I have spoken in favor of independent boards on several well-publicized occasions, I have always done so in the context of urging private initiative to avoid government mandate and have observed that, while accountability is not something which can fruitfully be mandated by government, that fact might not necessarily deter some who support efforts to do. Responsible private action concerning board structure, functions, and director/management relations --coupled with the philosophy of candid disclosure concerning the difficult trade-offs required--are, in my view, the best avenues to reducing the likelihood of statutory or regulatory constraints in this delicate area.

Second, some have criticized the Commission's director-categorization proposals as reflecting an insensitivity to strength of character, keen judgment, and other intangibles which are the ultimate determinants of effective service as a corporate director. Clearly, the capability of rendering independent judgment is, in the final analysis, a qualitative matter which cannot definitively be described in proxy material or defined in disclosure rules. That proposition does not, however, support the premise that disclosure rules have no role to play in encouraging more thoughtful evaluation of director nominees.

The nature and extent of a director's economic relationships with the company and its management bear upon a reasoned shareholder's consideration of the fact and the appearance of the director's independence and other qualifications for corporate office. The fact that intangible attributes, which no government edict can either mandate or define, may be the most important determinants of director effectiveness does not mean that other, more quantifiable factors are not also relevant to assessing a nominee's potential for meaningful board

service. Ideally, corporate directors and shareholders will weigh the extent to which a given nominee possesses those intangible attributes along with their consideration of the objective indicia of independence. In issuing Release No. 14970 and considering the resulting comments today, the Commission's fundamental objective is to stimulate progress toward that ideal.

Third, some commentators assumed that the proposals were designed primarily to influence corporate conduct rather than to provide useful information to shareholders. The Commission's proposals rest upon a belief that corporations themselves, individually and collectively, and their management, directors, and shareholders must bear the responsibility for decisions with respect to the proper board structure, functions, and director/management relations. Disclosure which promotes awareness of whether directors are being asked to fill conflicting roles and which encourages board members and shareholders to balance potential conflicts against the benefits expected from a given director's board service may result in changes in board composition at some

corporations. Eliciting disclosure of information which has such potential significance to shareholders is an entirely proper role for the Commission.

Finally, I would like to stress that any rules which the Commission may decide to adopt today will in no sense be final or immutable or the Commission's last word on the subject. If the Commission determines to promulgate amendments to the proxy rules growing out of the proposals in Release No. 14970, we will not cease our consideration of the interplay between those rules and enhanced accountability mechanisms. On the contrary, we will monitor carefully the effects of any such rules and, should it appear appropriate, will solicit public comment on their operation at the close of the up-coming proxy season. More broadly, since the Commission's corporate governance proceeding remains active and open, the Commission will continue to consider any steps which are available to enhance corporate accountability. The issues being debated in this proceeding--and in Congress, the courts, academia, and corporate board rooms across the country--are too important and too far-reaching for us to afford them anything less than the most careful, thorough and continuing attention.