**Jack Ehnes**
*Chief Executive Officer*

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December 4, 2003

Mr. Jonathan Katz
Secretary, Securities and Exchange Commission
450 Fifth Street N.W.
Washington, DC 20549

Dear Secretary Katz:

**RE: FILE NO. S7-19-03**

This letter is sent on behalf of the California State Teachers' Retirement System's (CalSTRS) members. CalSTRS commends the Commission for proposing new rules that may, for the first time, give shareholders the ability to participate in the director election process as a partner, without being classified in the pejorative as a dissident. We appreciate the time, thought and leadership that the Commission has dedicated to this historic corporate reform. CalSTRS is a public pension fund, established for the benefit of California's public school teachers over 90 years ago. CalSTRS has assets of approximately $103 billion; $43 billion of this amount is invested in the domestic equity market. These assets represent the retirement plan for 715,346 participants.

We previously registered our support for the Commission's decision to review the proxy rules surrounding this matter, back in June of 2003. Then, as now, the long-term nature of our liabilities focuses our interests in efforts to restore investor confidence in the capital markets. The specialist and mutual fund trading controversies, along with all of the corporate accountability failures over the past several years, makes us all aware of how important the people who serve as fiduciaries on the boards of directors. So, while we offer our strong support for the proposed rule, we do have a few suggestions for changes that we think will improve the operation of the rule. We do not intend to address all of the issues raised by the Commission in its proposed rules release. This response focuses on these broad issues, identified and discussed throughout the proposed rules release:

1. **Should the Commission adopt revisions to the proxy rules to require companies to place security holder nominees in the company's proxy materials? Are the means that currently are available to security holders to address a company's perceived unresponsiveness to security holder concerns adequate**?

**CalSTRS Response**:
Emphatically, yes; the Commission should adopt rules in this area because the current avenues available to shareholders are inadequate, inefficient, and expensive and do not address the predominant root causes for shareholder dissatisfaction with board representation, namely poor performance and accountability. The current methods may create the opportunity for short-term gaming by arbitrageurs and others who are not concerned with the long-term health and profitability of the companies.

CalSTRS believes that the presence of such a rule will increase board attention to these matters, and its responsiveness to shareholder concerns. Companies should be inclined to adopt standards of corporate governance that are commonly accepted and be more responsive to shareholder concerns that present at the ballot, such as elimination of classified boards, separation of chair and chief executive officer positions, shareholder approval of poison pills. In addition, the adoption of such a rule should improve the quality of the corporate board election nominating process. CalSTRS believes that this will be a tool of last resort for shareholders and that the companies selected for its use may likely suffer diminished market value and access to capital. This would likely impact the companies' ability to raise capital on advantageous terms comparable to companies that were not the subject of such action by shareholders. Finally, the adoption of this rule would not seem to pose an undue financial burden on the companies since the rule, in its likely limited application, will give shareholders access to existing proxy materials and does not force companies to produce separate proxy statements to accommodate the nominating shareholders.

2. **To which companies should the proposed rule apply**?

**CalSTRS Response:**
The proposed rule should apply to all companies that are subject to the proxy rules. CalSTRS does not believe that the Commission should narrow the universe of companies where shareholders could use the rule any further than market circumstances will dictate. Again, CalSTRS believes that this will be a tool of last resort and that its application will be limited. CalSTRS does not support allowing companies to obtain exemptions from the rule when the rule would otherwise apply. This would seem to invite conflict and undercut the effectiveness of the rule as a tool for addressing serious shareholder concerns. Additionally, since investors invest in a national market, CalSTRS believes that efforts on behalf of individual state legislators to insulate companies from this kind of accountability should be opposed by the Commission, the New York Stock Exchange, the NASDAQ and investors. At a minimum, permissive state law should not be required to implement the proposed rule. Finally, CalSTRS believes that plurality voting is the most reasonable means of electing directors under the proposed rules.

3. **What events must occur before a company would be required to include a security holder nominee in its proxy materials?**

**CalSTRS Response:**

- CalSTRS supports the Commission's goal of giving long-term shareholders a significant opportunity to participate in the proxy process of companies that have proven to be poor performers and unresponsive to shareholder concerns. We do not support the proposed triggers in the current SEC document and indeed, believe that triggers of any kind are inappropriate for this right of shareholder access. Additionally, CalSTRS believes the effectiveness of the rule is compromised by the use of the proposed triggers and that their requirements will make it unnecessarily difficult for shareholders like CalSTRS to correct injurious conduct. The presence of the triggers may lead to process gaming on the part of some in management; i.e., the bad actors will know in advance how long they have to abuse shareholders before any meaningful action can be taken by them.

- The SEC has stated that its intent is to "create a mechanism for nominees of long-term holders…to be included in the company proxy materials where there are indications that the proxy process has been ineffective or that security holders are dissatisfied with that process." The use of triggers will dilute the seriousness of that intent and may result in unintended portals for some companies.

- The triggers contained in the proposed rules require a two-year process to effect change on the board of directors; this effectively gives management another two years to harm shareholders' assets. CalSTRS believes that shareholders should have immediate access to the director nomination process; delay will only result in more value being lost by shareholders and serves no useful economic or public policy purpose.

- CalSTRS does not support the five percent ownership threshold requirement for access to the company's proxy materials. We believe that this threshold is too onerous, even for large institutional shareholders. Three of the largest public pension funds, representing over a third of a trillion dollars in market value, surveyed their one hundred largest domestic equity holdings. Even when combined, the funds only hold two percent or more of the outstanding shares of one company. We believe that a three percent ownership threshold is an appropriate measure of significant holdings and that it will support the Commission's goal of granting access to shareholders with substantial stakes in the companies and the equity markets in general.

- Finally, CalSTRS, along with many other investors has allocated a substantial portion of its active equity component to relational investment strategies; the proposed requirement regarding independence from the nominee holder is an impediment to this strategy and will diminish the results sought for our beneficiaries.

- We believe that an exception may need to be carved out that would recognize the value of having significant shareholders nominate themselves or their investment managers.

Thank you for the opportunity to comment on this important matter. Please feel free to contact me to discuss any issues raised in this letter.

Sincerely,

Jack Ehnes

Jack Ehnes
Chief Executive Office