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THE ROLE OF THE CORPORATE SECRETARY
IN PROMOTING CORPORATE ACCOUNTABILITY

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The American Society
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Several weeks ago, in addressing a group of business executives on the subject of corporate accountability, I began my remarks with a description of a play. The plot may be familiar to many in this group. I call the drama “Federal Regulation of Business.” The script is standard -- only the length of the acts and the names of the actors seem to change. Act I typically consists of the occurrence of several isolated human events -- some of which might attract broad interest and press coverage under the rubric of “scandals” or “flagrant abuses” -- followed by thinly scattered comment by public interest types to the effect that perhaps the government should do something to prevent these “outrages” from happening again. At the curtain of Act I, the plot seems insignificant and easy to ignore.

Act II is usually the long act -- not much new happens at first. Then events begin to accelerate. Public sentiment is fanned, usually by the reporting of further events of the same type as opened the drama. Public interest groups form. Congress shows interest. Often legislation is introduced but attracts little support, lulling opponents into a false sense of security. Act II closes with a bang, when Congressional and public interest, inflamed by a single dramatic and widely publicized occurrence, lead to a full-blown and broadly based legislative effort.

The final act of the drama is always the same -- legislation -- and the epilogue is generally a chorus of businessmen deploring the further intervention of government into business affairs. But the moral with which the audience is left seems to be: it takes a law to get business to behave responsibly. Recognize the play? It’s enjoyed quite a few revivals over the past 10 or 15 years with subtitles such as “auto safety,” “truth in packaging,” “occupational health and safety,” “ERISA,” and others.

The popularity of this drama tells us many things about our society and its tendency to look to government for the solution to perceived problems. To me, however, the most aggravating part of the entire script is the role in which business permits itself to be cast. Typically, business ignores the earlier rumbles of dissatisfaction induced by the

abuses which set the play in motion, and then, as public pressure mounts, turns to either the stonewalling or head-in-the-sand response. Eventually, usually late in Act III, business begins to see what is coming and to engage in the legislative process -- too late to do any good and often only to offer exaggerated predictions of the dire consequences which will follow if legislation is passed. Not often does business consider positive steps to alter its conduct, or to correct misperceptions of its conduct, as a means to avoid or minimize the legislative solution.

You might well ask what relevance this scenario has to corporate accountability or corporate secretaries. To put it succinctly, I believe we are in the early stages of Act II of a play entitled "federal legislation on corporate accountability." I make this observation with little pleasure. The superior economic achievement of our private enterprise system and our unequalled political and personal freedoms are mutually intertwined and mutually reinforcing characteristics in our society; we must be extremely cautious -- much more cautious than the proponents of federal corporate governance measures may recognize -- in tampering with their balance. But, if past performance is any guide, the way in which such legislation could be avoided is not by businessmen proclaiming that the problem is nonexistent, that the proponents are cranks, or that the consequences would be catastrophic, but rather by taking steps to insure that corporate power is effectively and responsibly exercised, in a manner consistent with public expectations concerning corporate accountability. The task of shaping the mechanisms of corporate accountability -- and the public perceptions of how those mechanisms are working -- in a way which is a positive alternative to the enactment of a statute or the creation of a regulatory agency is not an easy one, however, and requires continuous sensitivity to the need to match corporate processes to the constantly changing social environment.

In my judgment, the corporate secretaries of publicly-held companies as individuals, and the American Society of Corporate Secretaries as a body, are uniquely

well-situated to play a central role in that process. In most corporations, the corporate secretary has primary responsibility for the mechanics of the communications which join management and its shareholders -- the proxy solicitation process and the annual meeting. In addition, the corporate secretary has access to top management and the board of directors and, through that access, can help to sensitive them to important issues involving corporate accountability and to the ways in which the corporation might respond. Thus, I believe that the corporate secretaries can make a significant contribution to bringing down the curtain on the play I described earlier with a different ending. If, on the other hand, corporate secretaries view their role as simply a mechanical one -- to get proxy solicitations out and annual meetings staged with the least possible cost and annoyance to management -- you will, I fear, play a part in hastening government intervention in corporate decision-making. Because of the importance of that choice, I would like to share with you today some suggestions concerning how corporate secretaries can play a more vital role in the accountability process.

Corporate Accountability A Gap in Perceptions

Before turning to the corporate secretaries' role, let us examine briefly the dynamics of the undercurrent of interest in federal regulation of corporate governance. Over the years, a vast array of remedial social legislation has injected the government into the regulation of areas traditionally regarded as private. Indeed, as a society, we tend increasingly to look to government -- and that more and more often means to the federal government -- to regulate the performance of private conduct in order to insure that it is directed to what is perceived to be the public good.

The signs are beginning to multiply that the structure and governance of corporations may not long remain immune from that trend. The media have sensitized the public to examples of corporate "unaccountability," and accusations, substantiated and otherwise, of such unaccountability continue to multiply. Public opinion polls reflect

the predictable response to these sorts of well-publicized incidents. On the one hand, the public retains its confidence in the efficiency of American business -- its ability to provide goods and services -- and still overwhelmingly supports the private enterprise system. At the same time, however, the public has a deep-seated unease over the exercise of what is perceived as the enormous power of American business; the narrow, self-interested way in which that power is used, or perceived as used; and the lack of perceived congruity, between business's goals and objectives and those of the rest of our society.

Some who have written to me regarding corporate accountability have argued that, whatever business's stature in the public mind, government's is worse. While this may be so, I think that corporate leaders who take consolation from that fact -- or use it as an excuse to cling to the status quo -- seriously err. Despite mistrust of government regulators, articulate and influential advocates continue to express the view that corporate power needs to be further bridled by government action. Indeed, a recent survey of attitudes toward business concluded:

“Given the strength of public concerns about business’ irresponsibility in its pursuits of profits, we find generally strong support for government regulation of business. Fewer than 1 out of 4 Americans think that business is over-regulated. Moreover, while over 7 out 10 Americans will complain about government in terms of waste, inefficiency, and red tape, only 25% will complain about too much regulation.”*

Moreover, lack of trust in government is, I believe, a manifestation of an erosion of confidence in large institutions generally. The survey I quoted a moment ago also concluded:

* Yankelovich, Skelly and White, Inc., Report to Leadership on 1977 Findings of Corporate Priorities at 10 (1977).

“At the same time, however, our results indicate a continuation of a growth in public cynicism and mistrust directed at institutions. Indeed, there is no institution in America which has not, at some time in the past ten years, suffered a serious decline in public confidence. In the case of business, confidence has fallen from the 70% level in 1968 down to 15% in 1977.”*

Accordingly, rather than comfort ourselves with the notion that other institutions may enjoy still lower esteem than does business, each of us needs to examine the reasons for the disintegration of institutional confidence and to determine what our role can be in rebuilding the trust which cements the social order. If the federal regulation drama which I outlined earlier teaches us anything, it is, I think, that, once an entrenched, systematic gap opens in a particular area between business’s perception of its responsibility and public and Congressional perceptions, the result, in the long run, is rarely favorable to business.

Evidence of an Accountability Gap --
The Commission’s Shareholder Proceeding

Unfortunately, the views and comments which the Commission received in its recent public proceeding on corporate governance illustrate that there is a substantial gulf between the the corporate perception of the means by which the exercise of corporate power should be held accountable and the views expressed by others. Because the kind of gap which our hearings highlighted is one of the danger signals of impending federal regulation, I would like to review briefly the concerns which led to that proceeding and some of the themes which ran through the resulting expressions of views.

In announcing its re-examination of the rules relating to shareholder communications, shareholder participation in the corporate electoral process, and corporate governance generally, the Commission noted that certain events, such as corporate disclosures concerning questionable and illegal payments, had focused public

* Id. at 5.

attention on the subject of corporate accountability and had raised questions about the adequacy of existing checks and balances on corporate management. The Commission was also concerned that existing regulations might not provide shareholders with adequate opportunities to participate meaningfully in corporate governance or in the corporate electoral process. That is a matter which falls squarely within the parameters of the Commission's statutory mandate under Subsection 14(a) of the Securities Exchange Act, which authorizes the Commission to promulgate such rules governing the solicitation of proxies as may be necessary or appropriate in the public interest or for the protection of investors. The legislative history suggests that Congress wished the Commission to use this authority to assure fair corporate suffrage. Finally, despite the breadth of its existing mandate, the Commission recognized that a number of questions likely to be raised in the ambitious and wide-ranging inquiry contemplated would transcend the proxy rules in significance and that some methods of obtaining greater accountability -- if indeed desirable and necessary -- could not be achieved within the present statutory framework. The Commission therefore requested comments on the advisability of Commission support for new federal legislation, such as a bill establishing minimum federal standards of corporate conduct and shareholders' rights.

As you know, the data-gathering stages of this proceeding have consisted of a request for written public comments and of public hearings on a variety of issues relating to corporate governance and corporate responsibility. These issues included, for example:

- (1) whether Commission Rule 14a-8, regarding shareholder proposals, should be amended to further facilitate the presentation of shareholder views and concerns in the corporate proxy materials;
- (2) whether the Commission should amend its proxy rules to provide shareholder access to management proxy materials for the purpose of nominating directors;

(3) whether the Commission should require that proxy materials include additional disclosures relevant to an assessment of the quality and integrity of management; and

(4) whether shareholders should receive more information than is now available with respect to socially significant matters affecting their corporations.

Comments were also requested on related questions, such as the appropriate role of the securities industry self-regulatory organizations -- that is, the various exchanges and the National Association of Securities Dealers -- in improving corporate governance and on the costs and benefits of various approaches to corporate accountability.

The response to the Commission's request for input was illustrative of the depth and range of feeling surrounding these issues. In total, more than three hundred individuals and organizations -- including corporations, business associations, government officials, public interest and religious groups, law firms, bar associations, financial analysts, academics, accountants, and individual shareholders -- submitted written comments or testified during the five weeks of public hearings. The resulting files are thick, and conclusions not easy to draw -- a point underscored by the fact that, although the public phase of the proceeding closed last fall, the Commission's staff is only now completing its analysis and preparing to explore rulemaking alternatives with the Commission.

Despite the difficulty in extracting general propositions from the comment file and hearing transcript, I think that this proceeding provides evidence of the corporate/public perception gap I mentioned earlier. For example, a large number of corporate commentators who testified or submitted letters pointed out, some with great vehemence, that the question which the Commission had posed -- "How can corporations best be made more responsive to their shareholders and the public at large?" -- contained an implicit assumption which was, in fact, debatable. That is, they believed that corporations were already sufficiently responsive to their shareholders and the public;

that existing mechanisms of accountability would assure continued accountability; and that steps to promote “more” responsiveness were therefore unnecessary.

These conclusions reflect a certain perception of the role of the corporation. Thus, for many representatives of the corporate community, the social responsibility of corporations is defined in terms of its economic functions -- to provide products, services, jobs, and income and to maximize the return to its investors. By these standards, they say, corporations have discharged their responsibilities admirably, and measures to promote “accountability” are unnecessary and unwise. A statement made by a representative of one of our largest corporations is illustrative of this point of view:

“To my mind, the most important point to make about the present system of corporate governance in this country is that it works and in general it works well. That system has evolved, adapting to ever-changing circumstances, as the nation has grown. Its evolution has permitted the development of the greatest economic system in history and has produced a standard of living which is envied throughout the world.”

* * *

“I would hold that the present mode of corporate governance provides the shareholders assurance of management accountability with regard to that aspect of management performance about which he or she cares the most – its economic performance. How well the management succeeds in this regard provides the basis by which it is judged * * *.” *

* Testimony of William S. Cashel, Jr., Vice-Chairman of the Board and Chief Financial Officer, American Telephone & Telegraph Co.

In contrast to this view, however, others who participated in these proceedings -- particularly so-called “public interest” representatives, academics, and religious organizations -- indicated that their expectations for corporations extend well beyond fulfillment of economic functions. These witnesses expressed concern about the widespread societal effects of corporate conduct. According to one witness:

“[T]he firms we are talking about here are effectively private governments. Like public governments, they can tax us (through price-fixing) or severely damage the peoples’ health * * *. [T]he scope and reach of modern technology means that a malfunctioning nuclear reactor can contaminate hundreds of thousands, not to mention future generations; aerosol cans can partly deplete the earth’s ozone layer; a dangerous drug can deform 10,000 children.” **

While some believed that, as a matter of abstract morality, corporations should conduct their operations in whatever the witness considered to be “the public interest,” other -- perhaps more thoughtful -- non-corporate commentators stressed that corporate responsiveness to what might superficially be thought of as non-economic concerns was, in the long run, necessary in order for business to continue to perform its economic functions effectively. One witness expressed this view in these words:

“The ability of corporations to attract capital and retain public confidence [is] deeply affected by the way in which corporate managements respond to public concerns about corporate activities and their impact on people and society as a whole as well as on the community, the nation and the world. The exposure of corporations to private lawsuits and public enforcement actions makes their compliance with existing laws and regulations a matter of critical concern to their stockholders. * * * By the same token corporate insensitivity to public concerns about other types of corporate activities can also result in the enactment of

** Testimony of Ralph Nader.

new regulatory legislation or administrative regulations which can also have substantial bottom line implications.”*

A central question underlying many of the issues raised in the proceeding was whether affording shareholders an expanded role in corporate governance would have any actual impact on corporate accountability. Responses to this issue also revealed a gap in perceptions. Substantially all of the corporate and business representatives who addressed this issue reflected -- either implicitly or expressly -- the perception that both individual and institutional investors can safely be viewed as little more than passive “creditors,” more interested in the corporate income stream than in playing an active role in corporate affairs. They concluded that attempting to expand the role of shareholders in the governance process would be futile. There were, on the other hand, a substantial number of witnesses, including many shareholders and public interest groups, who asserted that shareholders, including some institutions, are becoming increasingly concerned with the sort of corporate activities once viewed as “social,” and that, in general, shareholders would evidence a greater interest in participating in corporate affairs if their participation were made more meaningful. Correspondingly, those witnesses believed that increased shareholder activity would serve to improve “accountability” as variously defined. For example, such participation would, they asserted, lessen the ability of inefficient or incompetent managers to become entrenched and isolated from the discipline of shareholder scrutiny. They stated that shareholders, even in small groups, can have an impact on management simply by bringing issues to their attention. In addition, it was suggested that an increased shareholder role could reduce the perceived need for government intervention.

My purpose in mentioning these conflicting contentions is not to suggest that one or the other view is right or wrong. To attempt to resolve that issue is to miss the point -- rightly or wrongly, wisely or foolishly, business and its vocal and influential critics --

* Testimony of Mary Gardiner Jones.

critics who have an impact on the legislative process -- have divergent views of the nature and accountability of corporate power. That, I think, is the important lesson that should be learned from the proceeding.

While the Commission has not yet considered the matter, I suspect that rule proposals will result from our inquiry, but that those proposals will, at least initially, center primarily around adjustments in the scope of the Commission's rule governing the submission of shareholder proposals, Rule 14a-8, and possibly also include some additional disclosure requirements bearing on boards of directors and corporate management. But, as I have indicated in the past, the importance of the hearing is not solely in the rulemaking which may emerge from them but also in the fact that they were held and the coverage which they attracted. If the proceeding alerts the corporate community to the need for it to undertake its own examination of the issues raised and to develop greater sensitivity to the public's perception of corporate accountability, then it will have served its purpose.

In fact, in my view, the process by which corporate power is effectively and responsibly exercised, in a manner consistent with public expectations, is one which cannot be meaningfully strengthened by fiat or prescription -- whether emanating from the Commission, the Congress, or any other governmental organ. Legislation, and government regulation in general, necessarily embody one solution which those regulated must apply to many circumstances. Corporate accountability cannot, in my view, be successfully addressed in that fashion. Mandating independent directors, for example, could not alone assure that the boards would play their proper role; the Commission's release on its investigation of National Telephone Company is a recent demonstration of that. What is necessary is that corporate directors and management be committed, in their own long-term self-interest, to making corporate accountability work. No legislation or rule can substitute for that commitment.

For that reason, the goal of those who believe in the efficiency and effectiveness of our present methods of private economic decision-making must be to stimulate the corporate sector to greater sensitivity to, and appreciation of, the need for it to address squarely the issue of corporate accountability. If too many business leaders insist that there is no problem or that the sole vehicle for corporate accountability is the “bottom line,” then I suspect that the political processes will ultimately take more and more of the control out of the hands of private managers and transfer it to the hands of government regulators. And that is a prospect that I would neither greet with enthusiasm nor expect to be, in the long run, consistent with a system of private enterprise.

The Role of the Corporate Secretary

What does this mean for corporate secretaries as individuals, and for the American Society of Corporate Secretaries as a group? Basically, I think that you face a choice. The ASCS can, if it wishes, act as a sort of lobbying group for the status quo. You, as individuals, can direct your attention and efforts to solving short-term problems - - assuring that annual meetings run smoothly and painlessly for directors and management; keeping the cost incident to those meetings and to shareholder communications within budget; and helping to make sure that management is suitably insulated from disturbing or unpleasant outside trends and pressures. If you follow that option, the short-run to which it looks may prove to be short indeed.

On the other hand, I believe that individual corporate secretaries and this society are in a unique position to help the companies which they serve, and the corporate community as a whole, to focus attention on the issues of corporate accountability, to weigh the costs and benefits, and to decide on positive steps which, in the context of each particular corporation, can help to promote accountability and thus retard the pressure for federal regulation. In that vein, I would like to offer some specific suggestions.

Sensitizing Management. The most fundamental task -- and the one in which I believe secretaries as individuals and this society as a group could play a key role -- is to sensitize and inform management and directors regarding the implications of the public's expanded perception of corporate responsibilities. The emphasis here is not so much on the social responsibilities which some self-styled public interest representatives espouse, but rather on what might better be called "public accountability" -- that is, mechanisms which encourage serious consideration of the way in which corporate managers have discharged their duties, including the quasi-public elements of those duties. If corporations are to preserve the power to control their own destiny, they must be able to assure the public that they discipline themselves and that they appropriately contain and channel their economic power -- real and perceived -- in a fashion which is consistent with both the discipline of the marketplace and the non-economic aspects of the public interest. Mechanisms which provide that assurance must become effective structural components of the process of governance and accountability of the American corporation.

On prior occasions, I have suggested ways in which public corporations could voluntarily structure their boards so as to enable them to exercise more meaningful oversight and control over corporate management. The strengthening of corporate accountability -- and ultimately of public confidence in business as an institution -- depends on the strengthening of the process by which those who exercise corporate power are held responsible for their stewardship, and, in my view, the independent director is the component in the existing corporate structure which can best perform this function -- perhaps the only one.

How should the board be structured in order to maximize the benefits which independent directors offer? I have stated previously that, as an ideal, the kind of accountability which I visualize can best be obtained with a board on which management is represented only by the chief executive. The roles of managing and of overseeing

management are in conflict and can not be performed by the same individuals. Further, management presence on the board often tends to deter the board from being effective. Finally, it is usually an automatic rather than an independent vote for management recommendations.

Let me provide several examples of the kinds of concerns and experiences that lead me to this conclusion. How can an independent director raise a question at a board meeting about whether a given corporate division should be sold when the man whose career depends upon that division is sitting at the meeting? How do you turn to your fellow board member and observe, "I thought that was a lousy presentation -- what did you think?" when the manager who made it is on the board? How do you raise matters at the meeting which reflect some criticism of the chief executive when a number of his subordinates are on the board? How many instances can you recall of subordinates on boards who disagreed with, let alone voted against, the CEO and the management recommendations?

The second aspect of my ideal board proposal is that the CEO should not be the chairman of the board. Control of the agenda process is a powerful tool, and the sense that management is accountable to the board is considerably strengthened when the issues to be presented at board meetings are not under management's control. Additionally, the intimidating power of the chair, especially when occupied by a chief executive to whom many on the board owe their directorships, and perhaps their livelihood, is a factor which deserves serious consideration. The president and CEO of a large eastern company, in a letter to me commenting on an earlier talk in which I made this recommendation, put the issue in another perspective. He wrote, "I demanded an outside chairman be elected because I felt unable to fairly present management's positions to the other directors while simultaneously feeling required as chairman to take the negative side of any argument." Another correspondent, an individual who has just resigned as chairman and chief executive of a large and well-known manufacturing company, noted that --

“There is, in my opinion, an inherent conflict between the Chairman of the Board, the Chief Executive Officer, and the Board’s responsibility for evaluation of the Chief Executive Officer’s performance. In addition, in today’s increasingly complex business environment, I believe these are two full-time jobs with different skill requirements.”

The final characteristic of my “ideal” board is that the independent directors should be individuals who are truly independent of, and unaffiliated with, the corporation. That criterion, of course, excludes many people who have traditionally served on corporate boards and who, as individuals, often make excellent directors -- the corporation’s outside counsel, its investment bankers, its commercial bankers, directors and officers of its customers or suppliers, and others who also serve the corporation in some capacity other than as directors and who, therefore, look to it for rewards other than those which accrue to directors. I am not suggesting that these individuals are dishonest or that self-interest usually clouds their judgment; on the contrary, they are valuable sources of expertise and experience. But both the perception and the reality of the accountability function mean that directors who serve the corporation in a dual role are imposing costs on the accountability process.

If this seems unrealistic, consider why the investment banker, commercial banker, lawyer, or major supplier joins that board. More often than not, I suspect, the reason is in order to protect or enhance the economic interests of the organization by which the director is employed. I certainly have no objection to bankers and lawyers who do not do business with the corporation being on boards. But, when they do have a business link with the company, how can we separate their responsibilities as directors from their interest in either obtaining, maintaining, or protecting their firm’s relationship with the corporation?

While the ideal I have proposed may not be achievable or even appropriate for all, such judgments should be made, not by management, but by a nominating committee of

independent directors. Such a body should be an effective mechanism for considering and implementing structural and functional improvements in corporate accountability and might be the key to resolving many of the issues which the implementation of my “ideal” board raises. For such a committee to be effective, it must concern itself with board composition and organization. It can thus be the vehicle to deal more objectively with the trade-offs between the benefits of, for example, additional management representatives on the board and the costs of those representatives. As long as those decisions are out of the hands of management and in the hands of knowledgeable, concerned independent outsiders, I believe that the environment will be right for the kind of accountability which I envision. Independent nominating committees might also provide a good mechanism to deal with and react to shareholder concerns and suggestions concerning composition -- including proposals for particular new directors. While I believe strongly that the concepts I have described hold the key to corporate accountability, my primary objective is to help the understanding of the sort of issues to which each corporation must give serious consideration. And I would urge that this society and its members do everything possible to focus corporate management’s attention on those issues.

Audit Committees. Another area to which I believe that the ASCS and its members should direct their efforts is the question of independent audit committees. As many of you are aware, the Commission’s General Counsel has recently opined that the Commission has the authority, under existing law, to require registered issuers to establish audit committees composed of independent directors. I understand that many here are interested to know whether the Commission plans to exercise that authority. Let me suggest that that is not the right question for you to be asking. The Commission has urged the New York Stock Exchange, the American Stock Exchange, the National Association of Securities Dealers, and the securities industry self-regulators generally to consider requiring issuers, as a listing standard, to establish independent audit

committees. Further, we have urged the American Institute of Certified Public Accountants to address the question of mandating audit committees for publicly-held companies in the context of an auditing standard -- that is, the Commission believes that the accounting profession should look into requiring its members to refrain from issuing an opinion on the financials of any publicly-held company which does not maintain an independent audit committee as the mechanism for dealing with the auditors. The AICPA has initiated such a proceeding. And I would urge that this society consider asking each of the companies to which its members belong to establish independent audit committees, if they have not already done so, and that the society devote its energies to making audit committees effective -- beginning by recommending meaningful criteria for the duties and functions of those committees. If the private sector, including this society, is able to implement these initiatives, the question of possible Commission rule-making with respect to audit committees will be moot.

Corporate Suffrage. Other important aspects of the issue of corporate accountability in which this society and its members have special expertise involve proxy solicitations and the conduct of annual meetings. Here, too, I think there are many issues which merit attention and would better be addressed by meaningful action on the part of this society rather than government. For example, shareholder witnesses at the Commission's hearings indicated that they feel virtually powerless to participate in the corporate electoral process. As a practical matter, shareholder elections almost invariably operate principally as a means of ratifying management's nominees. Indeed, it is clear that some shareholders perceive -- accurately, of course -- that many corporations are hostile to shareholder input in the director selection process. As if to confirm that the election process is not intended to result in any meaningful expression of shareholder sentiment, most corporate proxy cards do not provide for any mechanism to vote on nominees individually and often do not provide for any vote other than a vote in favor of management's slate -- and certainly no opportunity to vote against that slate. Under these

circumstances, shareholders must write in the margins of the proxy cards, draw lines, or use other creative means in order to tell management that they oppose its nominees.

It seems to me that this society should advocate steps to stimulate the adoption by its members' corporations of procedures to make the electoral process more meaningful to shareholders. In that connection, I think it is important to avoid the trap of "if it ain't broke, don't fix it." The fact that few shareholders today may be expressing an interest in participating in corporate affairs does not, I think, demonstrate that equally few would participate if there were more realistic opportunities. Further, I suspect that there has been a sort of self-selection process by which people who have developed a skepticism about whether corporations care about individual shareholders have dropped out of the market. I hope that that trend can be reversed.

Increasing opportunities for shareholder participation in the electoral process would, of course, entail some costs. But the costs to corporations of shareholders who become alienated may outweigh the costs of adding a few words to the proxy statement or more boxes on the proxy card. And I seriously question whether the dollars-and-cents costs of providing for greater shareholder input in the election process is truly significant -- especially if compared, for example, to the cost of preparing and distributing glossy annual reports with their expensive photographs.

Conduct of the Annual Meeting. Another issue which this group would be well-qualified to address is illustrated by the fact that a number of shareholder witnesses at the Commission's proceeding lamented that the annual meeting does not provide a useful or adequate opportunity for shareholder-management communication. They complained that the location and timing of the meeting are often inconvenient to shareholders and drew from this the cynical -- and possibly accurate -- conclusion that many corporations wish to discourage their shareholders from attending. These witnesses also felt that the meeting was conducted in a manner which prevented them from obtaining management's views on matters which concerned them and from having an adequate opportunity to

present proposals. Some even complained of rude or patronizing treatment at the hands of management.

Steps which encourage shareholder attendance and participation at annual meetings would, of course, carry attendant burdens. I realize -- as many of you are, I suspect, painfully aware -- that there are shareholders who are interested primarily in abusing the opportunities available to them and in using the annual meeting as a platform from which to inflate their own egos rather than to address issues of significance to the corporation. But the fact that there are those who abuse the process must not be an excuse for blocking the expression of legitimate shareholder concerns.

Shareholder communications. A further area which could benefit from this group's attention is the process of communication between shareholders and the company. That process is, of course, a two-way street; shareholders should have some mechanism by which the corporation can systematically receive and evaluate their views and, on the other hand, shareholders look to the company to keep them informed concerning developments affecting the business and management's responses to those developments. With respect to the communication channel from shareholders to the company, one possibility worth exploring is the establishment of a board committee which would routinely receive and review all shareholder communications, without editing or screening by management. On the other side of the coin -- that is, with respect to communications from the corporation to its shareholders, practices which your society might consider recommending include more frequent and informative interim reports to shareholders to complement current shareholder communications, and voluntary disclosure on matters of social concern in which shareholders have expressed an interest. The maintenance of an open shareholder letter file to provide more opportunity for direct communications between shareholders is yet another possible avenue to expand information exchange.

Measures such as these and others I have outlined would, I think, elicit a degree of responsible shareholder involvement in corporate affairs which does not exist today. This is not to say that corporate management should become “democratic” in the sense of opening up business decision-making to a shareholder plebescite. I do believe, however, that -- if corporations were to evidence some interest in and willingness to consider the views of their shareholders -- it would be possible to develop a supportive shareholder constituency for the company, to expand the base of sympathy and understanding for the problems of business generally, and to help in some degree to stimulate the return of individual investors to the securities markets.

Institutional shareholder participation. I do not mean to suggest that, in seeking to build shareholder interest and participation in corporate affairs, business should look to individuals to the exclusion of institutional shareholders. Let me give you an example. I recently wrote to the Financial Analysts Federation urging that it ask its members to adopt the practice of making recommendations to their institutional clients regarding how to vote on particular proxy proposals. In the past, analysts -- despite their obvious familiarity with business of the corporation -- have apparently refrained from making such recommendations, relying on the so-called “Wall Street Rule” -- that investors vote with management or sell their shares. In my view, that theory is outmoded today, and I urged the Financial Analysts Federation to take cognizance of that fact. I think that, at minimum, institutions are increasingly examining the merits of shareholder proposals, and that corporations must become more sensitive to this species of shareholder interest.

Conclusion

I have set forth for you why I believe that business -- and specifically the ASCS and its members -- should devote their talents and ingenuity to the issue of corporate accountability and to closing the gap between corporate and public perceptions on that

issue. I have a great deal of faith in the ability of the private sector to be creative and responsive in shaping its own destiny, and I urge you, individually and as a group, to consider seriously the positive steps which it is within your power to accomplish. Each of us who believes in the corporate system we enjoy today must give serious thought to his or her personal role in promoting corporate accountability. The economic structure under which we operate a decade from now will be the sum of the individual corporate decisions which business makes in the interim. And that is a personal challenge in which each of us must share.