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Co-Chairs, H. Carl McCall, Gerald M. Levin, Leon E. Panetta and
Members of the Corporate Accountability and Listing Standards Committee
c/o The New York Stock Exchange
11 Wall Street
New York, NY 10005

Dear Co-Chairs and Members of the Committee:

I am pleased to submit these written comments to the Committee. The New York Stock Exchange (NYSE) has both the opportunity and the obligation to consider the corporate governance standards of listed companies. The goal must be to raise standards in order to meet the expectations of investors and the public, particularly in light of recent events. My recommendations are presented for your consideration in achieving this goal.

In large measure the NYSE is in a unique position to fulfill these expectations. As an exchange with a deserved reputation for understanding its responsibilities, the NYSE can and should evaluate its standards in relation to new developments and new exposed problems. Clearly, the public now expects that the NYSE will evaluate not only specific listing rules but also other ways in which the exchange can elevate corporate governance standards. The Committee brings together excellent experience and judgment from the issuer community and professional representatives who have served that community at the highest quality level. I suggest as the Committee moves forward towards its final report that it consult with representatives from other constituencies---primarily the investors--- to the greatest degree possible in a candid exchange of views so that when its report is made public the NYSE has the fullest support for its recommendations.

I will now turn to certain of our recommendations for consideration in two general areas: (1) improving the quality of board performance, and (2) assuring that the relationships among the management, the board, and the shareholders best align their appropriate roles.

TIAA-CREF has long been a leader in articulating its views on these subjects and I refer therefore to our Policy Statement on Corporate Governance, last revised in year 2000. Although this Policy Statement fairly states our current views on the various topics, it is also true to say that we shortly will be in the process of our next revision, and trends and developments since year 2000 no doubt will affect the focus and emphasis of our views.

(1) Improving Quality of Board Performance

A concerned shareholder, TIAA-CREF has long appreciated as that we must rely critically on the performance of boards of directors of our portfolio companies. We do not sit in at board meetings and,

therefore, must try to assess board performance as best we can from observations of the company and certain indicia, which over the years we have come to believe will make a difference.

We start with board independence---true board independence. Here we observe that NYSE definitions of independence no longer work satisfactorily. The remedy for this problem fortunately is relatively easy to identify. When the NYSE looked at the appropriate definition of independence for audit committee members, it adopted standards that are more sensitive to the various ways independence can be compromised, though the definition was not all that was called for by the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees. Thus:

RECOMMENDATION 1: Apply the audit committee definition of independence to all directors, and consider strengthening that definition to provide (a) that a director employed by the corporation or its affiliates is not considered independent until five years after termination of employment (as called for in the Blue Ribbon Committee report); and (b) that financial relationships between the director and any executive disqualify that director from being considered "independent" (an area not addressed by the BRC).

The next area of concern is board composition as a whole. What is the minimum number of independent directors appropriate for a NYSE listed company? In our view, the Policy Statements of the Business Roundtable as well as TIAA-CREF have it right by stating that a substantial majority of the directors should be independent. Thus:

RECOMMENDATION 2: Provide that a substantial majority of directors should be independent.

Board independence, however, cannot be divorced from independence of key board committees, since so much critical board activity takes place in that context. The key committees are widely acknowledged to be the Audit, Nominating (or Governance), and Compensation committees. It is important that each of these committees function as best they can without an overly pervasive influence of the senior management. It may be particularly helpful for the NYSE to address the existence of an independent nominating committee. Many companies continue to lack such a committee, and many such committees in existence are not sufficiently independent, often including the CEO or other non-independent directors. Thus:

RECOMMENDATION 3: The NYSE should mandate the existence of each of these key committees, and should require they each consist entirely of independent directors.

There are particular issues relating to the compensation committee and serious questions about this committee's effectiveness such as --

Has the committee obtained the services of an independent consultant? Was that consultant the same organization used by the Human Resources department of the company? (Executive compensation is now taking on extraordinary significance as reflecting a problem with U.S. corporate governance, and special rules as to that function are appropriate.) Thus,

RECOMMENDATION 4: The NYSE should study the special importance of the role of executive compensation and recommend appropriate standards and practices of the compensation committee.

The above recommendations can very well be implemented as listing requirements. They are all capable of reasonable interpretation and clear in intent. Certain other corporate governance improvements could perhaps equally be implemented as "Best Practices" recommendations, but with the NYSE listing requirement that each listed company disclose in its proxy statement whether it conforms to these Best Practices and if not explains why the company believes this is an appropriate response. I would note that the London Stock Exchange and the Toronto Stock Exchange have taken this approach, with rather detailed best practice guidelines for governance.

Issues that could be dealt with as Best Practices are numerous, and would require considerable attention and thought. Suggestions could range from straightforward recommendations that clearly should be followed by all boards – such as that there be periodic meetings of independent directors in executive session – to more complicated subjects that may suggest a diversity of approaches, such as appropriate remuneration structures for outside board members. Some of the additional issues that I believe should be handled in Best Practices guidelines might include:

Director and Board evaluations:

- Does the company, either at the board level or individual director level, conduct evaluations to assess the quality of its own processes?

Director education:

- Does the company have an on-going program to assure that directors avail themselves of any of the myriad of outstanding programs offered by Business Schools, NACD, and other organizations? This concern is particularly addressed to what we perceive as a lack of understanding on the part of many Compensation Committee members as to that committee's role and responsibilities, and the information and understanding required to be an effective compensation committee member.

Thus:

RECOMMENDATION 5: Provide that the NYSE will set up a committee or task force with appropriate representation from affected constituencies to study and recommend "Best Practices" with disclosure requirements along the lines of British and Canadian practice.

(2) Relationship Among the Management, the Board, and Shareholders –Shareholder Voting Rights

The next area of corporate governance needing improvement relates to when shareholders have the right to participate in decisions that vitally affect their interests. Some are so critical that they should be implemented by listing standards.

First and foremost on the agenda now is the right of shareholders to approve dilutive stock option plans. Since this is a subject upon which the NYSE has much knowledge and experience I need not go on at great length. Thus:

RECOMMENDATION 6: Require shareholder approval for all materially dilutive option plans, with a requirement along the lines of the NYSE Task Force recommendation back in 1999. Indeed, the NYSE should restate its willingness to adopt those standards.

Other issues

There are other issues, which are appropriate for the NYSE to take up which might not directly relate to its direct regulatory responsibilities. These might include the governance of the regulatory structure for the accounting field. The NYSE would be a respected voice in recommending appropriate regulatory oversight of the accounting of profession.

Conclusion

I have identified a number of areas for corporate governance improvements that are both possible and realistic for implementation by the NYSE. The exchange could also be pro-active and identify other issues worthy of addressing. It is important that the Committee not view its mandate in a narrow sense and appreciate the broader public interest we all have in the credibility of our securities markets. Above all, the Committee should assure that by the time it issues its report publicly it has shared its findings and approaches with other affected constituencies so that when later debated all such constituencies have a sense that they were appropriately engaged and that their views were fully taken into account.

I would be glad to discuss these issues with you at greater length and continue to participate with the NYSE in achieving these important goals and purposes.

Sincerely,

Peter C. Clapman

Cc: Richard Grasso, Chairman, New York Stock Exchange
Catherine Kinney, Group Executive Vice President, Office of Chief Executive, New York Stock Exchange
James L. Cochrane, Senior Vice President, Strategy and Planning, New York Stock Exchange