Calvert

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July 23, 2007

Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F St., N.E.
Washington, D.C. 20549

Re: Upholding Shareholder Democracy through the Proxy Process

Dear Ms. Morris:

We are writing on behalf of Calvert Group, Ltd.[1] ("Calvert") to express our interest in recent Securities and Exchange Commission ("Commission") discussions regarding the proxy process. Our comments address publicly reported deliberations about the continuation of the SEC's role in stewarding the shareholder proposal process and in the application of the rules as they govern the inclusion of advisory/non-binding shareholder resolutions, pursuant to Rule 14a-8 under the Securities and Exchange Act of 1934 ("Proxy Rules").[2]

At the same time, we have also read encouraging reports that the Commission is "working on a proposal that could increase shareholder influence over how corporations are run."[3] We choose to consider this as a positive sign that the Commission is not planning to abdicate its role in the proxy process, nor is planning to take any action that would diminish shareholder's access to shareholder resolutions. We caution, however, that the promise of increasing shareholder

[1] Calvert is a financial services firm specializing in fixed income and responsible investing by sponsoring a family of open-end, registered investment companies ("mutual funds"). Calvert has over $15 billion in assets under management and offers 42 mutual fund portfolios with a broad range of investment objectives. At Calvert, we believe that healthy corporations are characterized by sound corporate governance and overall corporate social responsibility. In our view, companies that combine good governance and corporate social responsibility avoid unnecessary financial risk and are better positioned for long-term success. Sound corporate governance, of course, requires that the owners of a corporation (the shareholders) and their elected representatives (the board of directors/trustees) exercise conscientious oversight over corporate managers and hold those managers accountable for their actions.

[2] Securities and Exchange Commission, Briefing Paper: Roundtable on the Federal Proxy Rules and State Corporation Law, May 7, 2007.

[3] "Lawmakers Probe Commissioners on SEC's Direction," Ignites, June 28, 2007.

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interaction with companies will be an empty one if the Commission's "new proxy rules"[4] serve to further disenfranchise shareholders by disallowing precatory resolutions.

Thus, we are writing to urge you to not take any actions at next Wednesday's meeting that would further limit shareholder access to the proxy statement.[5] Specifically, Calvert supports the right of shareholders to file advisory/non-binding resolutions and strongly discourages any action that would undermine the ability of shareholders to raise governance, environmental, and social issues through the shareholder resolution filing process. Calvert agrees with the Commission that "the purpose of the rule is to ensure proper disclosure and enhance investor confidence in the securities markets ***by promoting proposals raising significant issues that are relevant to the company and its business***."[6] (emphasis added).

Over time, Calvert has worked in concert with the Commission Staff and the Commissioners themselves, in ensuring that a shareholder's right to engage in dialogue with the management and the boards of companies is fulfilled. This interaction has been based on the understanding that Calvert has long been a proponent of a shareholder's right to a voice in the management of a company, be it through true representation on the board or through shareholder resolutions. (Please refer to Attachments A through G for prior communications with the Commission regarding proxy process reform.)

The Proxy Rules have a long history, filled with periodic reforms and re-interpretations, with cycles such as this, when the investing public, corporate management, members of Congress, and the Commission itself, question the efficiency and effectiveness of the rules. Yet, over the years, shareholder communications with corporate management have been stewarded through the Proxy Rules, serving as the arbiter of best practices on many issues (managing climate change, disclosure of political contributions, and ending employment bias, for example). In light of the recent discussions during the Commission's Proxy Process Roundtables, Calvert has become alarmed over suggestions that the SEC may exit from the shareholder proposal process or alternatively, may resort to limiting the accessibility of the corporate proxy for shareholder resolutions that are advisory/non-binding in nature. Neither of these alternatives is acceptable.

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[4] SEC Chairman Christopher Cox, House Committee on Financial Services, "A Review of Investor Protection and Market Oversight with the Five Commissioners of the Securities and Exchange Commission," June 26, 2007.

[5] SEC Sunshine Act Meeting Notice for July 24, 2007 Open Meeting, July 18, 2007.

[6] Amendments to Rules on Shareholder Proposals; Proposed Rule, 17 C.F.R. pt 240, Request for Comments, 50695, Sept. 26, 1997.

Calvert engages in shareholder advocacy to make good companies better long-term investments. As a true "end user investor,"[7] Calvert invests with good companies, initiating a dialogue with corporate management over matters with social policy implications as they arise.[8] Calvert recognizes the board's power and authority in managing the business of the company and fulfilling its fiduciary duties towards shareholders. In turn, Calvert Funds, as shareowners, have the right to make proposals to fellow owners at the company's annual meetings. Advisory/non-binding shareholder resolutions request that the Board consider significant social policy matters, an action that is consistent with general state corporate law that allows a shareholder to bring before a meeting, anything that is proper for a shareholder to act upon.[9] Such precatory resolutions raise significant social policy issues that go beyond the day-to-day business matters of the Company (as administered by the officers/management of the company, under the supervision of the board), and accordingly, are proper subjects for shareholder consideration. Thus, it is within the parameters of state law, that shareholders submit precatory resolutions, requesting that the governing board consider taking an action, as opposed to outright demanding that action be taken (which would run counter to state law). These types of precatory shareholder resolutions must continue unfettered by the Proxy Rules.

The Commission's comments during the May roundtables that the Proxy Rules "place[s] the Commission's staff at the center of frequent disputes" over the interpretation of the Proxy Rules, demonstrates the recurrent challenge of obtaining a balance between the interests of the shareholder and that of corporate management which do not wish to address the legitimate concerns of its owners. In the view of the Staff, the Proxy Rules may not be the ideal venue to deal with controversies regarding shareholder rights. Calvert cannot agree.

The Commission's role in this area is a vital one as it facilitates shareholder access by allowing shareholders to be informed of and have an open dialogue with management and the board. This dialogue between the shareholder and the company is often facilitated through the shareholder proposal process, with much success.[10] We strongly believe that the Commission and its Staff are in the best position to

[7] Vice Chancellor Strine, Briefing Paper: Roundtable on the Federal Proxy Rules and State Corporation Law, p. 23 at 12, May 7, 2007.

[8] Please note that even recognizing that all shareholder proponents are not such long-term investors, nor promote legitimate social issues for shareholder consideration, the existence of short-term shareholders who submit frivolous proposals burdening the Staff should not serve to disenfranchise other legitimate proponents, such as Calvert.

[9] See, e.g., Del. Code Ann. Tit. 8, § 211(b).

[10] For the last twelve month period, Calvert has submitted 26 shareholder resolutions as the lead filer. Of these, 13 resolutions were withdrawn following successful dialogue with the respective company. Only three (3) of these resolutions became the subject of SEC No-Action requests, where ultimately one request to omit the resolution was granted and the other was not, and the third request was withdrawn by the company after Calvert was able to reach an agreement with them.

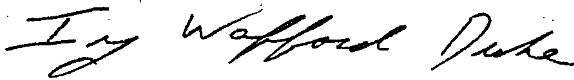
carryout its commitment to "provide[s] an avenue for communication between shareholders and companies, and among shareholders themselves."[11] We submit that such measures do not require the exit of the Commission from the conversation, nor the elimination of precatory resolutions.

In allowing this dialogue though, Calvert acknowledges that safeguards and stop gates must be objectively provided so as to not overburden the process. However, intermittent deterioration of the proxy rules (be it through a significant increase of the threshold necessary to re-file a resolution or an increase of the monetary value of shares that an shareholder must hold in order to file a resolution), is not an acceptable safeguard if it is simply a drawn-out process of eroding shareholder access by making incremental changes that ultimately transform the standards to an unreasonable level. Rather, we believe that the Commission must, as it has stated, "make a company's managers more responsive to the shareholders. That, in turn, could better align the interests of the company's management with that of shareholders, possibly resulting in an improvement in the company's operations and the market price for its shares."[12]

Calvert welcomes the opportunity to work with the Commission to improve the Proxy Rules, while moving them further in this direction in an effort to continue to protect the shareholder's ability to participate in legitimate issues of governance and corporate responsibility through the shareholder proposal process.

Should you like to further discuss the points raised in this letter, please feel free to contact William M. Tartikoff or Ivy Wafford Duke at 301-951-4881.

Sincerely,



William M. Tartikoff
Senior Vice President and
General Counsel

Ivy Wafford Duke
Assistant Vice President
and Associate General Counsel

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[11] Final Rule: Amendments to Rules on Shareholder Proposals, SEC Release No. 34-40018, May 21, 1998.

[12] Amendments to Rules on Shareholder Proposals; Proposed Rule, 17 C.F.R. pt 240, Cost Benefit Analysis, 50698 (1997) (proposed Sept. 26, 1997).

cc: Chairman Christopher Cox

Commissioner Paul S. Atkins

Commissioner Roel C. Campos

Commissioner Annette L. Nazareth

Commissioner Kathleen L. Casey

ATTACHMENTS

- Attachment A – December 6, 1996 – Letter to then-Commissioner Steven M. H. Wallman regarding the SEC's interpretation of Rule 14a-8(c)(7).
- Attachment B – February 6, 1997 – Letter to then-Chairman Arthur T. Levitt, Jr. as follow-up to communications with Commissioner Wallman.
- Attachment C – November 25, 1997 – Comment letter on File No. S7-25-97, regarding amendments to rules on shareholder proposals.
- Attachment D – March 2, 1998 – Letter regarding No-Action Position Issued to The Home Depot, Inc.
- Attachment E – June 12, 2003 – Comment letter supporting adoption of new rules to permit shareholder-nominated director candidates to appear in the corporate proxy statement and proxy ballot.
- Attachment F – September 15, 2003 – Comment letter on File No. S7-14-03, regarding nominating committee functions and communications between security holders and boards of directors.

ATTACHMENT A

December 6, 1996

Commissioner Steven M. H. Wallman
Securities and Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549

Commissioner Wallman:

This letter is written on behalf of the Calvert Group, Ltd. in response to your October 8, 1996 address to the Council of Institutional Investors advocating the revision of Rule 14a-8 shareholder proposals. Specifically, we would like to applaud and lend support to your recommendation that the SEC interpretation of Rule 14a-8(c)(7), allowing the exclusion of employment-related resolutions from proxy statements on the grounds that such resolutions are ordinary business operations, be reversed.

In July 1995, we submitted a rulemaking petition in alliance with the Interfaith Center on Corporate Responsibility and the Comptroller of the City of New York,[1] petitioning that the holding in Cracker Barrel[2] be reversed. This past September, Wayne Silby, a member of the Board of Trustees of the Calvert Social Investment Fund wrote to Chairman Levitt to express his concerns with the restrictions the Cracker Barrel decision has placed upon the shareholder proposal process. Despite the insightful responses we have received to Mr. Silby's letter, our concerns still remain, and we renew our request that the narrow interpretation of Rule 14a-8(c)(7) as established in Cracker Barrel be reversed.

The SEC has commented that "the line between includable and excludable employment-related proposals based on social policy considerations has become increasingly difficult to draw." Through Cracker Barrel, the SEC has chosen to foreclose any shareholder consideration of social policy concerns without objectively considering the unique facts related to the respective proposal. Thus, the SEC now engages in the process of "subjective line drawing" to the detriment of shareholders.

At a minimum, the SEC should consider the specific facts of each shareholder proposal presented before it in a no-action request, not rendering the claim mute with the broad

[1] See SEC File No. 4-378.
[2] Cracker Barrel Old Country Store, Inc., SEC No-Action Letter (October 13, 1992), *affirmed by Commission*, Cracker Barrel Old Country Store, Inc. (January 15, 1993).

stroke of its interpretative pen. Action on such an important issue should not be denied the shareholder because there is no clear line by which to distinguish ordinary business operations from separate social policy issues. When the line appears to be too difficult to draw, the SEC should protect the interests of the shareholder. By allowing shareholders to consider the merits of the proposal, the issue is best decided where the shareholders can balance for themselves, corporate vitality and social interests.

The SEC's 1976 Interpretative Release[3] should still hold true in that "whether a company may exclude a proposal may not depend on whether the proposal could be characterized as involving some day-to-day business matter. Rather the proposal may be excluded only after the proposal is also found to raise no substantial policy considerations." Accordingly, today's shareholder proposals addressing employment-related issues should not be prima facie eliminated from shareholder consideration as solely related to "ordinary business" rather, SEC review should focus on the nature of the proposal and whether it has effects emanating beyond ordinary business matters that raise social policy concerns, rightly to be discussed by shareholders.

The National Securities Markets Improvement Act of 1996 mandates that the SEC make recommendations for changes to improve shareholder access to proxy statements. The reversal of Cracker Barrel can be the first step to improving shareholder access by allowing shareholders to be informed of and have an open dialogue on social issues which go to the intrinsic value of a company. Although the reversal of the Cracker Barrel decision will not immediately resolve all of the challenges facing Rule 14a-8, it can represent a step toward better enlightenment on the interplay of shareholder concerns and business judgment. Such a step recognizes that these issues effect more than the policies and practices of a company and are often reflected in the company's bottom line - a definite area of interest to both management and the shareholder.

We appreciate your dedication and attention to the various challenges to Rule 14a-8 as you endeavor to balance the interests of management and the shareholder. To further your efforts, we make ourselves available to serve as a forum for discussing and further developing ideas for revising Rule 14a-8. Please feel free to contact me at (301) 951-4858 to further discuss the issues raised herein.

Respectfully submitted,

/s/ Ivy Wafford Duke

Ivy Wafford Duke
Assistant Counsel

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[3] TITLE, Exchange Act Release No. 34-12999, 41 Fed. Reg. 52994 (November 22, 1976).

cc: Chairman Arthur Levitt
Commissioner Isaac C. Hunt, Jr.
Commissioner Norman Johnson
William E. Morley, Senior Associate Director

bcc: Robert B. Reich, Secretary of Labor

ATTACHMENT B

February 6, 1997

Via Facsimile
Arthur T. Levitt, Jr., Chairman
Securities and Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549

Dear Chairman Levitt:

We write on behalf of Calvert Group, Ltd.[1] ("Calvert") as a follow-up to my letter dated December 6, 1996, addressed to Commissioner Wallman (with copies to yourself and the other Commissioners), expressing Calvert's advocacy of a reversal of the decision made in the Cracker Barrel[2] no-action letter as it applies to Rule 14a-8 shareholder proposals. We believe that Cracker Barrel, while wrong on its face, is only a symptom of the problem faced by the Securities and Exchange Commission (the "Commission"). The real issue is the efficiency of the shareholder proposal process.

The no-action letter issued to Cracker Barrel Old Country Store, Inc. in 1992 introduced the Commission's finding that under Rule 14a-8(c)(7), employment-related resolutions could be excluded from proxy statements on the grounds that such resolutions were ordinary business operations. In our prior letter, we asked that this decision be reversed. We still agree with Commissioner Wallman that Cracker Barrel should be reversed, and applaud Commissioner Hunt's foresight to recommend that Cracker Barrel be reconsidered. However, we also realize that interpretation of Rule 14a-8 goes beyond the issue of discriminatory employment policies as challenged in Cracker Barrel. The Commission must not only fix the Cracker Barrel "problem," but must address the boarder issue of how to handle the growing number of shareholder proposals raising

[1] Calvert Group Ltd. is a financial services firm specializing in tax-free and responsible investing. Calvert sponsors a family of open-end investment companies, or mutual funds, registered under the Investment Company Act of 1940. Calvert's philosophy is that shareholders can make sound investments without compromising their values. Accordingly, certain of Calvert's funds, in addition to assessing the economic viability of potential investments, evaluate companies according to specific social and environmental criteria designed for each fund. Calvert's funds represents over $5.3 billion in assets.

[2] Cracker Barrel Old Country Store, Inc., SEC No-Action Letter (October 13, 1992), *affirmed by Commission*, Cracker Barrel Old Country Store, Inc. (January 15, 1993).

social issues over the long-term. Although the reversal of Cracker Barrel would allow social policy issues fair entrance into the proxy system, a reversal could also result in a barrage of shareholder proposals submitted to management which ultimately could make their way to the Commission through no-action requests. The Commission would once again be overburdened with subjectively considering the issues presented in the shareholder proposals and determining whether there are any valid policy concerns to be addressed by the proxy system.

Our goal as proponents of the reversal of Cracker Barrel is not to open the flood gates and allow any nature of shareholder proposals entrance into the corporate boardrooms, but to maintain a dialogue between the shareholder and corporate management which is often facilitated through the shareholder proposal process. In allowing this dialogue, safeguards and stopgates must be objectively provided so as to not overburden the process.

Accordingly, we strongly support Commissioner Wallman's initiative in recommending a bright-line rule for addressing the substance and quantity of shareholder proposals. His suggested changes to the rule include the development of an objective test for the handling of proposals, relieving the Commission from having to subjectively consider the nature of each challenged proposal, tempered by the recognition that there is a need for the number of proposals to be limited so as not to overburden the proxy system. Even though Commissioner Wallman's suggested changes are preliminary, we believe that such a manner of thinking can only lead to the improvement of the situation in which we, as shareholders, and the Commission find ourselves. As shareholders, we want our voices to be heard in the corporate boardrooms while the Commission is challenged with balancing shareholder concerns against a corporation's business judgment or burdensome and frivolous proposals.

Shareholders are expressing discontent with the current process as witnessed through the recent appeals of no-action letters issued by the Commission on the Cracker Barrel issue. Moreover, as part of the National Securities Markets Improvement Act of 1996, Congress directed the Commission to conduct a formal study on shareholder proposals, citing the lack of a formal study in the wake of the reversal of the "long-standing Commission policy" and the "significant implications" of this policy reversal. We ask that you heed Congress' direction and undertake immediately a study on the impacts of this policy reversal on shareholder proposals. To wait until year-end, when the study is due, would be in direct disregard of the intent of the Act by delaying any improvement in the process for one or two or more years. The next logical step would be to correct those inefficient aspects of the current process uncovered during the study and, hopefully before year's end.

The reversal of the decision in Cracker Barrel will not address the disposition of all social policy issues over the long term. A reversal would only permit the shareholders to raise employment issues to management, but nothing would have been done to make the shareholder proposal process more efficient. Thus, we suggest that in addition to reversing Cracker Barrel, the Commission propose new rules on this issue for comment through the traditional rule making process, or simply request comments from the public.

Again, we are extremely appreciative of your consideration of the issues surrounding interpretation of Rule 14a-8, and look forward to your working to perfect this area. Should you wish to open a dialogue on the issues raised herein, please feel free to contact us at (301) 951-4881.

Sincerely,

/s/ William M. Tartikoff	/s/ Ivy Wafford Duke
William M. Tartikoff Senior Vice President and General Counsel	Ivy Wafford Duke Assistant Counsel

cc: Isaac C. Hunt, Jr., Commissioner
Norman S. Johnson, Commissioner
Steven M. H. Wallman, Commissioner

bcc: William E. Morley, Senior Associate Director
Robert B. Reich, Secretary of Labor

ATTACHMENT C

November 25, 1997

Via electronic delivery: *rule-comments@sec.gov*
Mr. Jonathan G. Katz, Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: File No. S7-25-97 -- Amendments to Rules on Shareholder Proposals

Dear Mr. Katz,

On behalf of Calvert Group, Ltd.[1] ("Calvert"), we are writing to comment on the rules proposed by the Securities and Exchange Commission (the "Commission") governing shareholder proposals. We want to first acknowledge the Staff's hard work at reviewing and considering the many responses to the questionnaire distributed earlier this year, and to express our appreciation of the Commission's endeavoring to reconcile the varied and often conflicting interests of shareholders and corporate management.

In the Proposed Rules, Request for Comments, the Commission states "[w]e believe that the purpose of the rule is to ensure proper ***disclosure and enhance investor confidence in the securities markets*** by promoting proposals raising significant issues that are relevant to the company and its business." [2] (emphasis added).

Calvert supports the above belief that improving shareholder access by allowing shareholders to be informed of and have an open dialogue on social issues goes to the intrinsic value of a company. Therefore, we feel that the proposed rules,

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[1]Calvert Group is a financial services firm specializing in tax-free and responsible investing by sponsoring a family of open-end, registered investment companies. Our 14 socially responsible mutual funds currently represent approximately 100,000 shareholders with $1.6 billion in assets.
[2]Amendments to Rules on Shareholder Proposals; Proposed Rule, 17 C.F.R. pt 240, Request for Comments, 50695 (1997) (proposed Sept. 26, 1997).

only to the extent they create an open and honest expression by the Commission to recognize shareholder democracy, are a step in the right direction.

Meaningful rules can be developed and implemented which would allow a corporation to continue to be managed in an efficient manner, yet be accountable to its shareholders through the corporate democratic process and enhanced corporate disclosure. It is with this desire for reform of the current system that we view the proposed amendments, endeavoring to find a revised shareholder proposal process which creates a system that is sustainable of both interests, returning shareholder rights to the forefront while addressing the business concerns of corporate management.

Unfortunately, based on the proposed amendments, we are forced to question whether the Commission has truly embraced the enlightened view of shareholder democracy. With this concern, we provide the following comments and recommendations:

- **Revised Rule 14a-8(c)(4) -- Personal Claim or Grievance**

The Commission seeks to streamline the exclusion of proposals that are found to further personal grievances or special interests. Thus, when a proposal is "neutral" on its face, the Commission would express "no view" with respect to a no-action request. It would then be up to the company (based upon the company's own fact finding) to determine whether the proposal could be excluded.

We realize that determining whether a neutral proposal can be excluded is a difficult responsibility for the Commission; however, we are concerned that a company would interpret a "no view" as a concurrence that it can omit the proposal in the absence of being able to clearly demonstrate that the proposal is personal in nature. Moreover, as former Commissioner Steven M.H. Wallman has argued in the past, the exclusion of personal claims or grievances should not be a ground for the omission of an otherwise proper shareholder proposal. Thus, Calvert believes that this exclusion should be viewed extremely narrowly and only applied when the proponent clearly is abusing the proxy rules.

If, arguendo, the Commission proceeds to interpret Rule 14a-8(c)(4) more broadly, we believe that the Commission should not exclude itself from the discussion regarding neutral proposals, but should serve as the arbiter between

the proponent (who ostensibly will argue that the proposal is not of a personal nature) and the company (whose main motive may be to exclude the proposal regardless of the non-personal nature of the proposal). In this light, we expect that a good faith standard would be applied to the fact finding element to ensure that the company is objectively considering the facts in deciding to exclude the proposal as a personal claim or grievance. Further, when a company seeks to exercise its ability to exclude a proposal under this rule, the company should be required to respond in writing to the proponent explaining in detail why the proposal is being excluded. At the same time, a copy of this response should be forwarded to the Commission for its records. In addition, it should be clear that the company would bear a heavy burden of proof in any subsequent litigation on the issue.

- **Revised Rule 14a-8(c)(5) -- Relevance**

The proposed rules would streamline the exclusion of matters considered irrelevant to corporate business to permit a company to exclude proposals that relate to economically insignificant portions (from the company's viewpoint) of its business. Recognizing that some matters may not be quantifiable or may relate to a small percentage of a company's business, we are alarmed to see that the Commission has crafted the proposed amendment to only address quantifiable matters that represent at least either $10 million in the company's gross revenues or total costs, or 3% of gross revenues or total assets. By default, this provision would allow for the blanket exclusion of those smaller operations and unquantifiable practices of a company.

It is understandable why a relevance standard should be applied under this rule in order to filter out those frivolous proposals which do not apply to the operations of a company. However, in determining what is relevant to a company, we cannot be so narrow-minded as to believe that a company's "insignificant" practice has <u>no</u> effect upon the surrounding community or upon the bottom-line of the company no matter how unquantifiable the revenue may be.

Although a company may consider one of its practices to be insignificant in the context of its company-wide operations, this same practice may have an overwhelming impact on the surrounding community. For example, a company's release of an effluent into the local water system from an operation not meeting the quantifiable benchmark, but which may reflect company-wide

environmental policies, could have a grave impact upon the environment and specifically, upon the members of the community in which it is released. Thus, allowing for the exclusion of "insignificant" practices from shareholder proposals prevents shareholders from creating a dialogue with other concerned shareholders and with corporate management over what they may view as having a significant impact on their communities. Such a discourse, in turn, could provide shareholders with a better understanding of the policy behind the company's practices as well as enlighten corporate management about the social impact of their practices.

Moreover, the Commission may recall that at the height of the anti-apartheid movement, although a company's operations in South Africa typically were not significant financial endeavors, these companies realized that, in principle, their small, often minute operations in South Africa were tacitly supporting the structure of apartheid. On principle, the American corporations began to divest, recognizing that despite the insignificance of each company's South African operations in contrast to their entire business operations, each individual company's activities in South Africa had a significant impact upon the South African community.

Therefore, under the relevance standard, the Commission must recognize that an "insignificant" corporate practice is extremely relevant to those who are impacted by the practice, and it should craft this rule accordingly, looking beyond the financial parameters of a company's operations.

- **Rule 14a-8(c)(7) -- Ordinary Business - Reversal of Cracker Barrel**

Cracker Barrel

The Commission proposes to reverse the policy of Cracker Barrel which has effectively disenfranchised shareholders, rendering them without a voice to express their "social" concerns to management regarding certain employment issues. With a reversal, the Commission would reinstitute a substantive review of the issues sought to be excluded by corporate management. Each no-action letter would be reviewed on its own merits. Calvert supports the reversal of Cracker Barrel.[3]

[3]Brief of Calvert Group, Ltd., Amicus Curiae, in Support of Affirmance, New York City Employees' Retirement System, The United States Trust Company, and the Women's Division of the Board of Global Ministries of the United Methodist Church v. Securities and Exchange Commission, 45 F.3d 7 (2d Cir.

Nonetheless, we are concerned that despite the substantive, case-by-case analysis being re-employed when addressing possible issues of ordinary business, the policy underlying Cracker Barrel will remain intact. In fact, the Commission has stated that reversal of Cracker Barrel would not affect the Staff's analysis of any other category of proposals under the exclusion, such as proposals on general business operations.[4]

Proposed continuation of this policy is further demonstrated by the Commission's cite to a prior no-action position underwhich a proposal requesting information on affirmative action and minority representation at the company was subjected to the ordinary business exclusion.[5] The Commission found the proposal to involve a request for detailed information on the composition of the company's work force, employment practices, and selection of program content to be ordinary business. The Commission's bright-line test of the "ordinary business exclusion" which has prohibited such issues from being included in a company's proxy materials in the past will be continued into the future. Thus, it appears the only change to be expected under the reversal of Cracker Barrel is that each no-action letter request will be individually reviewed; but nonetheless, ultimately will be granted. The Commission should not delude the public by claiming to reverse Cracker Barrel, but in reality not changing its substantive position.

Along with the reversal, the Commission's 1976 Interpretative Release should be re-implemented. The amended rules should allow "whether a company may exclude a proposal may not depend on whether the proposal could be characterized as involving some day-to-day business matter. Rather the proposal

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1995)(No. 94-6072); and in July 1995, Calvert submitted a rulemaking petition in alliance with the Interfaith Center on Corporate Responsibility and the Comptroller of the City of New York, petitioning that the holding in Cracker Barrel be reversed. See SEC File No. 4-378.

[4]Proposed Rule, Proposed Amendments, The Interpretation of Rule 14a-8(c)(7): The "Ordinary Business Exclusion," 50688 n.74. Earlier this year, the Commission denied an appeal of a no-action position taken with respect to AlliedSignal (AlliedSignal, Inc., SEC No-Action Letter (Jan. 8, 1997)), citing the "comprehensive study of Rule 14a-8 and the shareholder proposal process mandated by Congress...," thereby leaving the shareholder community with the belief that the interpretation adopted in such no-action positions would be addressed in the proposed rules. However, the Commission clearly is refusing to address the challenges to the policy interpretations underlying the AlliedSignal no-action letter which are based upon the position taken in Cracker Barrel so that even though Cracker Barrel is reversed, the policy enacted thereunder remains.

[5] Capital Cities/ABC, Inc., SEC No-Action Letter (April 4, 1991).

may be excluded only after the proposal is also found to raise no substantial policy considerations."[6]

At a minimum, the Commission should consider the specific facts of each shareholder proposal, not rendering the claim mute based upon a predisposition favoring the autonomy of corporate management nor upon management's wish to not disclose its employment practices. Although the proposed rules have done away with shareholder proposals addressing employment-related issues being prima facie eliminated from shareholder consideration, the focus should be on the nature of the proposal and whether it has effects that raise social policy concerns, rightly to be discussed by shareholders.

We ask that the Commission realize the damage that will be done by continuing the Cracker Barrel policy interpretation. This interpretation must be revised to reflect a true concern for shareholder democracy by allowing inclusion of employment-related proposals in a proxy statement when the issue is found to raise substantial policy considerations beyond the ordinary business of a company.

Definition of a Shareholder "Proposal"

The proposed rules purport to define a "proposal" as "a request that the company or its board of directors take an action." Thus, the Commission is proposing excluding from the shareholder process a proposal which "merely purport[s] to express shareholders' views."[7] We would argue that requests for additional information are just as vital to the shareholder proposal process. Shareholder interaction surrounding the request for disclosure serves as another avenue for communication and facilitates increased disclosure of information about which the shareholders have an interest.

In being an investment management firm which advocates "socially responsible investing," [8] Calvert often seeks informal discussions with management outside of the proxy process. However, despite the fact that Calvert infrequently resorts

[6] Adoption of Amendments Relating to Proposals by Security Holders, Exchange Act Release No. 34-12999, 41 Fed. Reg. 52994 (Nov. 22, 1976).
[7] Proposed Rule, Proposed Amendments, Other Proposed Modifications, 50694.
[8] American citizens are investing more and more of their assets in line with their values. There are currently $1.18 trillion in socially invested assets. (1997 Report on Responsible Investing Trends in the United States, Social Investment Forum (November 5, 1997)). See also Robert N. Veres, "Getting Decent," Dow Jones Investment Advisor (November 1997).

to the proxy process,[9] the existence of the current rules shows support for shareholder democracy and serves as a check on corporate management. The resulting dialogue that typically follows Calvert's information gathering inquiries serves to inform Calvert of what possible issues might exist at the company, as well as to enhance the lines of communication between us as a shareholder and the company.

The Commission's view would thwart even the benign information gathering process. Defining the proposal process to prima facie exclude information gathering requests effectively serves to lessen the voice of the shareholder who only seeks additional disclosure to gain a better understanding of the company's practices, a purpose towards which the Commission claims to be striving. It would also be inconsistent with the current purpose of the proxy rules, which is "to provide and regulate a channel of communication among shareholders and public companies."[10] The gathering of relevant information, which is the cornerstone of the investment process, should be supported as an endeavor which expands the standard channels of communication (i.e., shareholder resolutions).

A rule crafted to allow shareholder access to corporate management creates the impetus for a company to disclose important matters to its shareholders. Further, without rules promoting the protection of shareholder interests, shareholders are effectively silenced from establishing a dialogue with other shareholders and corporate management about issues which may have a far greater magnitude beyond the corporate board room, extending into the community. Accordingly, the Commission should not discount the value and contribution that shareholder requests for additional disclosure add to the discussion, but rather, must recognize the value of such inquiries and the resultant disclosure.

- **Revised Rule 14a-8(c)(10) -- Mootness**

[9]For the years 1992 through present, Calvert has only filed 11 shareholder proposals, raising issues related to EEO disclosure, environmental reporting and board diversity. Of those, eight were eventually withdrawn as a result of dialogue with company management. The three remaining proposals were included in the companies' proxy materials where they received an average approval rate of 15.3%. In one situation where a no-action letter was sought from the Commission, an agreement was reached between Calvert and management wherein the shareholder proposal was withdrawn before the Commission considered the no-action request.

[10]Proposed Rule, Initial Regulatory Flexibility Analysis, 50697.

On its face, the proposed amendments to this exclusion appear to be well based, but are still susceptible to abuse. Exclusion of a proposal which addresses an issue that has already been "substantially implemented" by the company seems reasonable; however, the Commission must be careful that in interpreting "substantially implemented," a company not be allowed to rely solely upon its past actions. Rather, it must objectively determine whether the action taken years before still impacts the current corporate environment. As social issues are process driven, if the effects of the implemented action are no longer evident and new concerns have arisen, we would argue that the proposal should not be excluded.

- **Revised Rule 14a-8(c)(12) -- Re-submission Thresholds**

The proposed rules seek to increase the minimal requirements for a shareholder to re-submit a proposal based upon the amount of support received for its prior submission. This action appears to be fair on its face, but in practice, this change creates a higher barrier for shareholders to surmount in order to present their concerns to corporate management.

Historically, a social issue develops over several years with the public slow to develop a full understanding of the issue. For example, divestment in South Africa had been demanded for several years before the public finally understood the travesties done under the apartheid regime and pressured (through divestment) nonprogressive companies from doing business there. Therefore, in increasing re-submission thresholds, we question the Commission's intent in offering shareholders this mechanism. As stated above, the nature of some important shareholder proposals was that they began as a grassroots effort. In increasing the re-submission requirements, the Commission would thwart these efforts.

Accordingly, we recommend that the Commission not increase the re-submission thresholds, but leave them at their current levels. In addition, the Commission should revise the rules so that the threshold is based upon the percentage of support received from actual votes received (excluding non-votes and those voted at management's discretion). Thereby, the universe on which the percentage is based would recognize the actual votes of shareholders and therein, provide a "cleaner" number by which to analyze prior support of a proposal.

- **New Rule -- Override Mechanism**

Calvert approves of the proposed creation of a mechanism whereby a proposal (previously excluded under either the Relevance or Ordinary Business exclusions) would be included in the proxy if the proponent attains 3% shareholder support. In light of the Commission's hesitance to show stronger support for shareholder democracy, it is good to see that at least the proponent of a proposal can override a company's decision to exclude the proposal by garnering shareholder support.

However, we would posit that such an effort may be difficult on shareholders. Thus, at a minimum, a listing of the company's existing shareholders should be provided by the company to the proponent from which to solicit the necessary support. Moreover, the 3% requirement must be lowered to make it more realistically attainable by shareholders (i.e., the average mid-size company has 96.5 million shares,[11] translating into a shareholder having to attain support from other shareholders owning no less than 2.9 million shares of such company; quite a daunting requirement for the average investor/shareholder).

- **Revised Rule 14a-8(e) -- Staff Review of Company's Statement**

Currently, Rule 14a-8(e) allows shareholders to submit for Staff review a company's statement in its proxy materials issued in opposition to a shareholder proposal. Although the Commission states that not many shareholders utilize this review opportunity, we disagree that the review mechanism should be eliminated. As it is important for a shareholder resolution to be included in a company's proxy materials, it is just as important for the proposal to be presented fairly in those materials. Shareholders need to have a disinterested party to whom it can take the company's statement if it appears to contain false or misleading statements within the meaning of Rule 14a-9.

The availability of the Staff's review of the company's statement in the proxy materials is a necessary safeguard in the process. The admission that the Staff has found several companies' statements to be faulty is reason enough why this review is necessary and should not be eliminated from the process.

[11] S&P 400 Mid-Cap Index, Member Weights median.

- **Suggested Additional Provisions**

Although not directly falling under any existing or proposed rule, a counterpart to an effective shareholder proposal process should be to require companies to disclose in their proxy materials a listing of those shareholder proposals that have been omitted from the proxy for any reason. This listing would serve to inform shareholders of those issues which other shareholders have raised, and provides disclosure which should enable shareholders to better understand the practices and positions of the management of the company. Such listing could simply describe the proposal, the proponent, and the basis and rationale for the omission. In addition, a company seeking a no-action position from the Staff should be required to make an affirmative argument on the materiality of the imposition submitting the proposal would have on the company's operations and what other items the company is putting on the proxy (such as compensation issues, etc.).

It is our understanding that some of the proposed amendments to the rules evolved in response to companies feeling that they were becoming overburdened by the amount of proposals they were receiving. We do not believe that "Corporate America" has become overburdened by shareholder proposals or is micro-managed by their shareholders. Neither do we buy into the argument that the cost of incorporating shareholder proposals into the proxy is financially onerous. Of the thousands of publicly-traded companies issuing voting securities in this country, only 184 companies received shareholder resolutions on "social" issues so far for 1997, 163 resolutions were received in 1996 and 154 in 1995.[12] Thus, it does not appear that shareholder proposals have been burdensome upon Corporate America. Further, it is hard to commiserate with these companies that at the same time, find adequate money and time to include those issues brought by management (i.e., compensation, benefits) in the proxy.

* * * *

Again, we applaud the Commission for its efforts, but we respectfully remind the Commission of its duty to protect the interests of shareholders and to realize that the current interpretation of ordinary business, as well as some of the other

[12] On average, the companies that do receive shareholder resolutions receive less than two (2) such resolutions per year. Corporate Social Issues Reporter, Investor Responsibility Research Center, June 1995, 1996 and 1997 (preliminary data). But see the Commission's statistics that "[b]etween 300 and 400 companies typically receive a total of about 900 shareholder proposals each year" (Proposed Rule, Introduction and Background, 50683), a statement which is somewhat inconsistent with the figures cited above.

proposed rules, are not supportive of, but rather are stifling to shareholder democracy. The Commission has seized the opportunity to take a first step towards making inroads to correct the shareholder proposal process. However, it would be a missed opportunity if in re-crafting the rules, the Commission fails to recognize the demands of shareholder democracy and to fully support enhanced disclosure and creation of a dialogue between companies and their shareholders.

As a mutual fund manager which seeks to dialogue with the management of its portfolio holdings for the betterment of its own shareholders, and for those in the community impacted by its operations, Calvert believes that the Commission must, as it has stated, "make a company's managers more responsive to the shareholders. That, in turn, could better align the interests of the company's management with that of shareholders, possibly resulting in an improvement in the company's operations and the market price for its shares."[13] We further agree with the Commission when it states the proxy rules should "provide[s] an avenue for communication between shareholders and companies, and among shareholders themselves."[14]

Please feel free to contact either of us at (301) 951-4881 to discuss Calvert's continuing concerns and recommendations for addressing these concerns.

Sincerely,

/s/ William M. Tartikoff

William M. Tartikoff
Senior Vice President and
General Counsel

/s/ Ivy Wafford Duke

Ivy Wafford Duke
Assistant Counsel

[13]Proposed Rule, Cost Benefit Analysis, 50698.
[14]Proposed Rule, Executive Summary, 50682.

bcc: Commissioner Laura Unger
Brian Lane (Division of Corporation Finance)
Former Commissioner Steven M.H. Wallman
Mitchel Foyer (Representative to Senator Sarbanes)
Andrew Lowenthal (Representative to Senator Dodd)
Helena Grannis (Representative to Senator D'Amato)
Michael Schroeder (The Wall Street Journal)

ATTACHMENT D

March 2, 1998

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

Re: No-Action Position Issued to The Home Depot, Inc.

Ladies and Gentlemen:

On November 14, 1997, Calvert along with several other filers submitted a shareholder resolution to Home Depot requesting that they expand their annual Social Responsibility Report to include information disclosing the status of diversity issues, policy implementations regarding equal employment opportunities and any pending lawsuits alleging discrimination. In response, Home Depot sought to omit the resolution from its proxy materials for its 1998 Annual Meeting of the Stockholders, submitting a request to the Securities and Exchange Commission Division of Corporation Finance (the "Division") seeking a statement that it will not recommend enforcement action if Home Depot excludes the shareholder proposal based upon the ordinary business exclusion provided under Rule 14a-8(c)(7).

On, Monday, March 2, 1998, the Division informed us that they were granting Home Depot a no-action position that it could omit the resolution with the threat of enforcement action. Although Home Depot's argument for exclusion of the resolution was based upon its belief that the resolution concerns "employment practices and policies" which it feels are within the conduct of its ordinary business operations under the influence of the Cracker Barrel interpretations. However, in our original response to the no-action request and now, we assert that the ordinary business exclusion was not meant to allow companies to evade accountability to shareholders on such significant issues.

The concerns that shareholders have regarding Home Depot's equal employment opportunity policies and practices go beyond "ordinary business" as it was only a request

for information we believe is important in assessing the on-going financial risks that shareholders face in owning Home Depot stock. The importance of our resolution is further reinforced when considering that Home Depot's recent million dollar settlement, which was posted against Home Depot's third-quarter earnings for 1997, is a result of Home Depot's denial to address these same issues.

Accordingly, in this instance, with Home Depot, as with any social policy issues, the Division's focus should be on the nature of the proposal, recognizing that the Home Depot resolution highlights significant social policy concerns which should be raised for consideration by all shareholders.

In its request, Home Depot states that it intends to omit the proposal pursuant to Rule 14a-8(c)(7). In its view, the resolution concerns "employment practices and policies" which it feels are within the conduct of its ordinary business operations. Specifically, Home Depot refers to the substance of the proposal which seeks expansion of their Social Responsibility Report[1] to include information which would disclose its status on diversity issues, policy implementations regarding equal employment opportunities and pending lawsuits alleging discrimination. Home Depot contends such reporting is a form of "communication with stockholders" and is excludable as ordinary business.

Proponents disagree. We find it disingenuous for Home Depot to argue that the issue of equal employment opportunity at Home Depot is ordinary business. Home Depot's denials surrounding the very subject of our resolution, the issue of diversity and alleged discrimination throughout the organization, has already had an adverse effect upon the Company and its shareholders.[2] Clearly, our resolution raises significant policy issues which go beyond the parameters of ordinary business.

Proponents assert that the shareholder resolution should not be excluded under the ordinary business exclusion of the Proxy Rules as it addresses an issue of significant impact upon the Company and ultimately, upon its bottom-line financial soundness and its shareholders. This resolution cannot be characterized as mundane in nature, only involving a day-to-day business matter, or not involving any substantial policy considerations.[3] Indeed, this resolution presents significant policy and economic implications for Home Depot and its shareholders and should be presented in the proxy statements for a shareholder vote. The recent settlement by Home Depot of claims based

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[1] Home Depot publishes this annual report which touts its "social responsibility" in areas such as the environment and housing which it clearly recognizes to be of interest to shareholders; yet, this report does not include equal employment opportunities.

[2] On Sept. 23, 1997, Home Depot filed Form 8-K to inform shareholders that it had incurred a cost of $104 million to settle several allegations of gender discrimination in its hiring, promotion and compensation practices: Four gender discrimination cases (one being a class action suit), involving more than 25,000 current and former employees from coast-to-coast).

[3] Adoption of Amendments Relating to Proposals by Security Holders, Exchange Act Release No. 34-12999, 41 Fed. Reg. 52994, 52998 (Nov. 22, 1976).

on this very issue emphasizes the importance and necessity of the Company's disclosure in this area.

We appeal to the Division to reject Home Depot's petition for a no-action position. The Commission has clearly enunciated its mandate that under certain circumstances, employment related proposals not be excluded as the ordinary business of a company. Proponents' resolution clearly raises significant social issues pertaining to Home Depot's policies and practices which already have had an adverse impact upon shareholders.

Very truly yours,

/s/ Ivy Wafford Duke

Ivy Wafford Duke,
Assistant Secretary
Calvert Asset Management Company

Calvert

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ATTACHMENT E

June 12, 2003

Via electronic delivery: rule-comments@sec.gov
Mr. Jonathan G. Katz, Secretary
Securities and Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549

Re: File No. S7-10-03

Dear Mr. Katz:

On behalf of Calvert Group, Ltd. ("Calvert"),[1] America's largest family of socially responsible mutual funds, I am writing to petition the Securities and Exchange Commission (the "Commission") to adopt new rules under Section 14 of the Securities and Exchange Act of 1934 to permit shareholder-nominated director candidates to appear in the corporate proxy statement and proxy ballot.

At Calvert, we believe that healthy corporations are characterized by sound corporate governance and overall corporate social responsibility. The well-governed company meets high standards of corporate ethics and operates in the best interests of shareholders; while the socially responsible company meets high standards of corporate ethics and operates in the best interests of all stakeholders, including shareholders, employees, customers, communities and the environment. In our view, companies that combine good governance and corporate social responsibility avoid unnecessary financial risk and are better positioned for long-term success.

Sound corporate governance, of course, requires that the owners of a corporation (the shareholders) and their elected representatives (the board of directors) exercise conscientious oversight over corporate managers and hold those managers accountable for their actions. Changes to Rule 14a-8 are urgently required if such oversight and accountability is to be achieved.

[1] Calvert Group, Ltd. is a financial services firm specializing in tax-free and responsible investing by sponsoring a family of open-end, registered investment companies, with approximately $9 billion in assets under management for more than 300,000 shareholders.

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www.calvert.com

As the Commission is well aware, recent corporate scandals reveal an almost systemic breakdown in corporate governance, oversight and accountability that has shaken investor confidence and roiled financial markets. Government lawmakers and regulators have responded promptly. The Sarbanes-Oxley Act of 2002 created an accounting oversight board, stiffened criminal penalties for corporate wrongdoing, and addressed such issues as the accuracy of corporate financial statements, auditor and analyst independence, company officials' sales of corporate stock, and funding for the Commission. At the same time, the New York Stock Exchange ("NYSE"), at the request of the Commission, has proposed significant revisions to its listing requirements that will cover a range of corporate governance issues – including the independence of corporate directors and key corporate governance committees. The Commission also adopted new rules on proxy voting disclosure by mutual funds and investment advisers, and is considering other reforms.

These are commendable reforms. Yet the most elemental reform of all may simply be to grant corporate shareholders access to the proxy ballot so that they can nominate their own director representatives. This step alone could significantly enhance shareholder and director oversight, strengthen corporate governance, and improve corporate accountability.

In the aftermath of recent corporate scandals, there has been much discussion of director *independence.* Underlying this discussion, however, is the more fundamental issue of director *representation*. Corporate directors are meant to represent shareholders. Indeed, corporate directors would be unnecessary but for the fact that shareholders are too many and too dispersed to effectively oversee corporate managers and govern publicly-traded corporations themselves. The shareholders must therefore govern through their representatives: the directors.

These are elementary principles of American corporate law. Why then do the shareholders who directors ostensibly represent not have effective means to nominate and elect those directors? In theory, of course, they have the right to do so. Most state corporation laws provide that a company's shareholders elect directors, or that shareholders vote for their choice among nominees for boards of directors, or that shareholder proxies will be solicited for the election of directors. In practice, however, such provisions are meaningless. Although state laws permit shareholders to nominate and elect directors, these fundamental rights are effectively unavailable so long as shareholders and their nominees are denied equal access to the corporate proxy.

Instead, shareholders who wish to put their own candidates on the ballot must launch proxy fights at their own expense, while management can freely use company funds to finance the election of their own hand-picked directors. To further complicate matters, companies often erect additional obstacles, including regulatory challenges and costly litigation, to thwart investor-led proxy fights.

Under our present system of corporate governance, for each board seat there is only one candidate – backed by company management, and with the election financed by company funds. This process is undemocratic, and is in fact quite an anomaly, as directors are supposed to represent shareholders, not management. Needless to say, it also creates an inherent conflict of interest at the heart of our system of corporate governance: allowing corporate management to hand-pick the boards who are supposed to oversee and police them. This system creates an undue reliance on government regulation and oversight to accomplish what shareholders could often accomplish by themselves if only democracy were extended to corporate boardrooms.

Calvert therefore urges the Commission to adopt new rules providing long-term shareholders with equal access to the proxy for purposes of nominating independent directors to represent their interests. At the same time, we understand that such rules need to be designed so as not to allow or facilitate low-cost hostile takeovers by short-term investors or nuisance candidacies by investors who do not have a stake in a company's long-term interests.[2] We would therefore recommend that the Commission consider the following criteria for shareholder proxy ballot access:

- *Minimum Ownership Threshold:* The nominating shareholder or shareholder group should own a substantial block of shares (e.g., 1% to 3% minimum) or consist of a certain, minimum number of shareholders (e.g., 100), with each shareholder holding a minimum amount of stock (e.g., $10,000).

- *Minimum Holding Period:* A majority of the shares held by the nominating shareholders should have been held for a minimum period of time (e.g., one-year holding period).

- *Maturity of Company:* Qualifying shareholder groups should have the right to nominate independent directors to represent their interests only for companies whose shares, or those of the predecessor company or surviving company in the event of a merger, acquisition or other re-structuring, have been publicly traded for a minimum of three years.

- *Maximum Permissible Slate:* Each qualifying shareholder group should have the right to nominate a maximum number of directors at each shareholder meeting that in all cases should be less than a majority of the entire board, regardless of how many competing shareholder groups are seeking to nominate candidates. While shareholders should have reasonable access to the ballot, this access should not open a back door to corporate takeovers.

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[2] See, 1980 Staff Report on Corporate Accountability.

- *Exemption from Regulation 13-D:* Communications among shareholders holding more than the 1% to 3% threshold should be exempted from Regulation 13-D so long as such communications are confined to director nominations and elections and are not an attempt to change control of a company, either through a tender offer or a proxy contest for board control. A safe harbor should be created, in other words, for shareholder-nominated director slates constituting less than a majority of the board, as well as shareholder-sponsored efforts to urge other shareholders to withhold votes from management-nominated directors.

- *Financial Expert*: To the extent regulatory reforms require the chair or other members of corporate audit committees to possess certain minimum accounting or other financial experience and expertise, shareholder groups nominating director candidates should have the opportunity to nominate candidates specifically for those director positions as well.

- *Director Statement:* Each director nominee, whether shareholder- or management-nominated, should be provided the opportunity to include a background statement and biography in the proxy statement in support of his or her candidacy.

- *Provisions to Prevent Collusion*: The new rules should contain appropriate provisions to prevent management or the incumbent board from seeking to pre-empt an independent shareholder effort to nominate directors by, for example, colluding with a friendly shareholder group to nominate directors who are in effect their own nominees. Such provisions should also apply to the prevention of collusion between shareholder groups seeking to change control of a corporation by combining slates to elect a majority of directors.

Calvert believes the above criteria will allow long-term investors equal access to the proxy for purposes of nominating directors while creating a nomination and election process that is fair and consistent with the policies underlying Rule 13-D.

The time has come to democratize corporate elections and bring accountability to the corporate boardroom by providing long-term shareholders the ability to effectively nominate corporate directors. The result will be improved shareholder oversight, increased accountability by corporate management, strengthened governance by corporate boards and less reliance on government intervention to accomplish what more democratically run corporations may often be able to accomplish themselves. Accordingly, Calvert urges the Commission to amend Rule 14a-8(i)(8) to grant shareholders access to the corporate proxy for purposes of nominating corporate directors, and to adopt such other reforms as are necessary to facilitate the same.

* * *

In addition to the above comments as they relate to the election of directors, Calvert would also like to take this opportunity to comment on the "ordinary business" exemption provided under Rule 14a-8(i)(7). Please note that these comments are being made with reference to the Commission's indication last summer that it is considering the elimination of the "ordinary business" exception, even though it is not a part of the Commission's current request for comments.

Calvert recognizes that shareholder access to the ballot for corporate directors is a different matter than access to the proxy for shareholder proposals. In fact, however, these two mechanisms of corporate governance are highly interdependent. Shareholders whose interests are not being well represented by current directors could benefit from access both to the ballot for directors, and to the proxy statement for other purposes. At the moment, shareholders do have some access to the proxy statement for shareholder proposals, but the "ordinary business" exemption has been relied upon to exclude many proposals that we believe are worthy of consideration by all shareholders,[3] as well as by management and company directors. It is crucial that shareholders be able to represent their interests to company directors and management through both mechanisms – proxy access for director nominations *and* for shareholder proposals that bear upon important issues of governance and corporate responsibility.

Calvert has long been a proponent of a shareholder's right to a voice in the management of a company, be it through true representation on the board or through shareholder resolutions. Calvert worked closely with the Commission in constructing the 1998 Amendments to Rules on Shareholder Proposals. These efforts were rewarded when the Commission reversed Cracker Barrel, and acknowledged that, there being no "bright-line test" to determine when employment-related issues fall within the realm of a company's ordinary business, substantive consideration of no-action requests should proceed on a case-by-case basis. Nonetheless since that time,[4] the Commission has continued to

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[3] For instance, Calvert has strongly supported shareholders' interests and need to have a voice in the expensing of stock options (See Letter to the SEC dated August 12, 2002, co-written by Calvert and Walden Asset Management). Yet, at a time when this was a topic of great public interest and scrutiny, such resolutions were still allowed to be excluded from the proxy as being "ordinary business".

[4] Since adoption of the 1998 Final Proxy Rules, Calvert has submitted approximately 68 shareholder resolutions to companies in its mutual fund portfolios concerning issues ranging from corporate governance to corporate social responsibility, and five (5) of these resolutions have been subjected to no-action requests of the Commission. Of these requests, the Commission granted No-Action relief based on Rule 14a-8(i)(7) in the following two (2) cases:

1. Tootsie Roll Industries, Inc., SEC No-Action Letter (January 31, 2002)(granting no-action relief under Rule 14a-8(i)(7) as the request that Tootsie Roll identify and disassociate from any

apply the "ordinary business" exception to allow companies to omit shareholder resolutions on matters of critical importance to shareholders. We request that the Commission re-consider this practice of disenfranchising shareholders who should have a right to raise their voice and engage in dialogue with management at annual shareholder meetings.

Calvert has always supported the belief that improving shareholder access by allowing shareholders to be informed of and have an open dialogue with management improves corporate governance and long-term shareholder value. Thus, Calvert hopes the Commission will soon consider replacing the "ordinary business" exception with a more carefully circumscribed rule that enfranchises shareholders to participate in legitimate issues of governance and corporate responsibility.

* * *

Lastly, in response to the direction given the Division of Corporate Finance to "consult with all interested parties, including representatives of pension funds, shareholder advocacy groups, and representatives from the business and legal communities," Calvert offers its experience and expertise as a mutual fund company that regularly engages companies in dialogue and shareholder resolutions. Should you like to further discuss the points raised in this letter, please feel free to contact William M. Tartikoff, Esq. or Ivy Wafford Duke, Esq. at 301-951-4881.

Sincerely,

/s/ Barbara J. Krumsiek
Barbara J. Krumsiek
Chief Executive Director
Calvert Group, Ltd.

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offensive imagery to the American Indian community relates "to the company's ordinary business operations (i.e., the manner in which a company advertises its products)").

2. Home Depot, SEC No-Action Letter (February 24, 1998)(granting no-action relief under Rule 14a-8(i)(10) as the request that Home Depot prepare a report on its affirmative action policies and programs relates "to the conduct of the Company's ordinary business operations (i.e., employment related matters)").

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ATTACHMENT F

September 15, 2003

Via electronic delivery: *rule-comments@sec.gov*
Jonathan G. Katz, Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549-0609

Re: File No. S7-14-03

Dear Secretary Katz,

On behalf of Calvert Group, Ltd. ("Calvert"),[1] America's largest family of socially responsible mutual funds, I am writing in response to the Securities and Exchange Commission's solicitation of views (SEC proposed rule S7-14-03) regarding nominating committee functions and communications between security holders and boards of directors.

Although Calvert fully supports those comments already submitted by the Social Investment Forum, of which it is a member, Calvert is submitting its own set of comments, as follow-up to its June 12, 2003 correspondence in which it urged the SEC to take the very steps that it is currently taking under this Rule Proposal … to adopt new rules to provide for better access to the proxy for purposes of nominating independent directors and improve shareholder communications with directors. Please allow me to provide some context then, for our recommendations.

Calvert believes that healthy corporations are characterized by sound corporate governance and overall corporate social responsibility. The well-governed socially responsible company meets high standards of corporate ethics and operates in the best interests not only of shareholders but of other stakeholders - employees, customers, communities and the environment. In our view, companies that combine good governance and corporate social responsibility avoid unnecessary financial risk and are better positioned for long-term success.

[1] Calvert Group, Ltd. is a financial services firm specializing in tax-free and responsible investing by sponsoring a family of open-end, registered investment companies, with approximately $9 billion in assets under management for more than 300,000 shareholders.

In the past two years, we have seen a series of governance failures that can be laid directly at the doors of directors - who have the duty to represent the interests of shareholders. Scores of directors failed to discharge these duties, and millions of shareholders have been harmed as a result.

Against this backdrop, we believe now is an appropriate time to re-examine the rules governing nominating committee disclosures and communications. The current regime has been in place for 25 years. Yet, the net result has been boilerplate generalities at best, and little or no meaningful disclosure. Indeed, Calvert researches over 3,000 companies annually, and it is rare that we receive prompt, complete information from companies or their directors in response to our queries. This year we filed nine shareholder resolutions with companies seeking greater gender and racial diversify on those companies' boards - primarily because our prior efforts to engage those companies in dialogue prior to filing were wholly unsuccessful.

We believe that every company should have, and disclose, relevant information describing the qualifications for boards of directors, and that those statements should include a description of minimum qualifications for directors as well as standards for director independence and diversity. Moreover, these disclosures should apply to all director candidates, whether identified by company management or by shareholders.

We believe in particular that diversity is a critical attribute to a well functioning board and an essential measure of good governance. In an increasingly complex global market place, the ability to draw on a wide range of viewpoints, backgrounds, skills, experience and expertise internally increases the likelihood of making the right decisions. We believe board diversity that includes race, gender, culture, thought and geography helps to ensure that different perspectives are brought to bear on issues while enhancing the likelihood that proposed solutions will be nuanced and comprehensive.

We also believe that it is critical that board diversity - including diversity of race and gender - be addressed in companies' nominating committee charters and procedures. In this connection, Calvert has drafted and issued Model Charter Language for corporate nominating and governance committees focused on attaining diversity in corporate boardrooms. The document builds on and complements recent corporate reforms by providing companies with the means to formalize their commitment to an independent and inclusive board. A copy of the Model Nominating Committee Charter Language is available on the Calvert web site (www.calvert.com).

We additionally support and strongly recommend a number of other key disclosures and process clarifications. Specifically, companies should be required to describe, either in the proxy or in some other required financial filing, the following:

- The manner in which shareowners can communicate with the Board.
- Which Board members are responsible for stakeholder or shareholder communication.
- The procedures by which shareholder and stakeholder communications can be forwarded to the appropriate corporate executives and departments.

- Whether and how management filters shareholder communications with the Board.
- Policies for how individual/small shareholders can communicate with the Board, if that policy differs from institutional investor communication policies.
- The presence or absence of a nominating committee, and its members.
- All relationships that the members of nominating committees have with the company, outside of board service.
- The nominating committee charter, including procedures for identifying and evaluating the qualifications, racial and gender diversity, and independence of all potential nominees; or, if the company has no nominating committee charter, a disclosure to that effect.
- Description of the minimum qualifications for director candidates, including experience, expertise, education, representation, race, and gender.
- Description of the nominating committee's process for identifying and evaluating all candidates for director positions, including those nominated by shareholders.

I would welcome the opportunity to discuss these recommendations further with you. Please feel free to contact me at your convenience.

Thank you for your consideration.

Sincerely,

/s/ Barbara J. Krumsiek
Barbara J. Krumsiek
President and CEO
Calvert Group, Ltd.