



February 18, 2010

The Honorable Christopher J. Dodd
Chairman
United States Senate Committee on Banking,
Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Richard C. Shelby
Ranking Member
United States Senate Committee on Banking,
Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Dodd and Ranking Member Shelby:

I am writing on behalf of the Council of Institutional Investors in response to a February 16 letter from various business groups opposing vital reforms strengthening corporate governance. As a nonprofit association of public, union and corporate pension funds with combined assets that exceed \$3 trillion, the Council represents major, long-term shareowners with a duty to protect the retirement assets of millions of American workers. Significantly affected by the financial crisis, Council members have a deep, abiding interest in strong financial regulatory reform.

As you are aware, the global financial crisis represents a massive failure of oversight. It is well recognized that poor corporate governance helped contribute to the market turmoil of the last two years. For example, the Organisation for Economic Co-operation and Development, whose members comprise 30 largely developed economies including the United States, concluded in February 2009 “that the financial crisis can be to an important extent attributed to failures and weaknesses in corporate governance arrangements.”¹ Securities and Exchange Commission (SEC) Chairman Mary Schapiro further acknowledged in May 2009 that the “crisis has led many to raise serious questions and concerns about the accountability and responsiveness of some companies and boards of directors, to the interests of shareholders.”²

In order to restore market confidence and ensure that such a crisis never happens again, regulators and investors must be given the tools necessary to guarantee robust oversight and meaningful accountability of corporate managers and directors. Investors in particular need stronger market-based tools to hold managers and boards accountable. The financial benefits of greater board oversight are well documented. According to Professor Lucian Bebchuk of Harvard Law School, “There is a substantial body of empirical evidence that is consistent with the view that making boards more accountable by invigorating corporate elections increases shareholder value.”³ Professor Bebchuk also reports that there is considerable evidence that “reducing incumbent directors’ insulation from removal” leads to better corporate management, and that increased insulation leads to poor performance.⁴

¹ Grant Kirkpatrick, Organisation for Economic Co-operation and Development, *The Corporate Governance Lessons from the Financial Crisis*, 2 (Feb. 2009), <http://www.oecd.org/dataoecd/32/1/42229620.pdf>.

² Mary L. Schapiro, Chairman, U.S. Securities and Exchange Commission (SEC), Statement at SEC Open Meeting on Facilitating Shareholder Director Nominations (May 20, 2009) (transcript available online at <http://www.sec.gov/news/speech/2009/spch052009mls.htm>).

³ Lucian A. Bebchuk and Scott Hirst, *Private Ordering and the Proxy Access Debate*, *The Business Lawyer*, 8 (forthcoming Feb. 2010) (available online at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1513408).

⁴ *Id.*

As the Investors' Working Group (IWG) concludes, "Vigorous regulation alone cannot address all of the abuses that paved the way to financial disaster. Shareowner-driven market discipline is also critical."⁵ An independent and diverse blue-ribbon panel of financial market experts, the IWG endorsed many of the governance improvements included in the *Restoring American Financial Stability Act of 2009* discussion draft such as:

- Reaffirmation of the SEC's authority to issue a proxy access rule;
- Majority voting for the election of directors;
- An advisory shareowner vote on executive compensation ("say on pay");
- Compensation committee independence; and
- Stronger clawbacks for unearned incentive compensation.

These key corporate governance improvements would go a long way toward more meaningful oversight by public companies' owners—their investors. Such measures would address, at least in part, many of the problems that led to the current crisis. More importantly, they would empower shareowners to anticipate and potentially address unforeseen future risks. As part of a broad financial regulatory overhaul, corporate governance reform will in the long run help foster genuine corporate accountability leading to more stable jobs and a more secure retirement for American workers.

Thank you for consideration of the views of investors and for your leadership in connection with this critical area of financial regulatory reform. We look forward to continuing to work with you to strengthen corporate governance and the entire U.S. financial system. If you have any questions, please feel free to contact me at (202) 261-7096, or jonathan@cii.org, or our General Counsel Jeff Mahoney at (202) 261-7081 or jeff@cii.org.

Sincerely,



Jonathan D. Urick
Analyst
Council of Institutional Investors

⁵ Investors Working Group, *U.S. Financial Regulatory Reform: The Investors' Perspective*, 22 (July 2009), <http://www.cii.org/UserFiles/file/IWGreport.pdf>.