

COUNCIL OF INSTITUTIONAL INVESTORS

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May 13, 2008

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

Re: Nominations of Luis Aguilar, Troy Paredes and Elisse Walter to be
commissioners of the Securities and Exchange Commission

Dear Chairman Dodd:

On behalf of the Council of Institutional Investors, I am writing to provide questions that the Senate Banking Committee may want to ask candidates for commissioner of the Securities and Exchange Commission (SEC) to gauge nominees' positions on issues of great importance to investors and all capital market participants. The Council believes strongly that any candidate must understand and respect the SEC's primary mission of protecting investors.

The Council is a nonprofit association of public, union and corporate pension funds with combined assets that exceed \$3 trillion. Member funds are major long-term shareowners with a duty to protect the retirement assets of millions of American workers. The Council strives to educate its members and the public about good corporate governance, shareowner rights and related investment issues, and to advocate on our members' behalf.

In a letter dated Aug. 22, 2007, the Council urged you and Sen. Richard Shelby to exercise your leadership to guarantee that nominees for commissioner possess the firmest commitment toward advancing and enhancing the SEC's role as the "investor's advocate." Since then, the Bush administration has nominated Luis Aguilar, Troy Paredes and Elisse Walter to serve as commissioners. The Council believes it is critical that all candidates be asked to explain in detail their positions on specific, pressing issues affecting investors and public trust in the capital markets.

The following summarizes a few commission-related issues of importance to Council members and includes some recommended questions for the nominees. The Council respectfully requests that the Senate Banking Committee consider adding these issues to the list of topics to be discussed at the nomination hearings.

Financial Regulation Reform and the Role of the SEC: As you are aware, the U.S. Treasury Department released on March 31 a proposal to overhaul the U.S. financial regulatory system. The Treasury plan encompasses several phases of reform. Short-term goals include the expansion of the President's Working Group, which is currently restricted to just a few large regulators. Another near-term goal is the creation of a federal Mortgage Origination Commission that would set minimum standards for mortgage brokers and other firms that sell mortgages.

The blueprint envisions a new regulatory architecture of three “objectives-based” agencies: a remodeled Federal Reserve in charge of overall market stability; a prudential regulator for banks and thrifts (and the closure of the Office of Thrift Supervision); and a business-conduct agency that would assume most of the SEC’s investor protection duties but regulate more by principles than rules.

The Council welcomes the opportunity to address overlaps and gaps in the U.S. financial regulatory network, in the interest of promoting a more effective and efficient system of rules. But the Council feels strongly that any restructuring that would significantly dismantle investor protections would be unwise—especially at a time when lax oversight of credit risks has devastated shareowner value across a wide swath of assets.

- ? *Broadly speaking, would you recommend any changes to the current U.S. system of financial regulation? If so, what changes would you suggest?*
- ? *What is your response to the Treasury Department’s blueprint to overhaul the U.S. financial regulation system? How would the proposed changes help and/or harm investors and regulated entities?*
- ? *What are your views on remaking the SEC into a prudential regulator that operates more by guidelines and principles than hard-and-fast rules?*
- ? *Conflicts of interest at credit rating agencies pose a dilemma for investors who rely on ratings when making critical investment decisions. Should the SEC seek greater separation of the ratings and business sides of agencies that have Nationally Recognized Statistical Rating Organization status?*

International Convergence of Financial Reporting Standards: Globalization of world markets is driving demand for uniform financial reporting standards. The most widely accepted set of accounting standards currently are the International Financial Reporting Standards (IFRS) issued by the independent London-based International Accounting Standards Board (IASB). To date, more than 100 countries, including the European Union member states, either use or plan to adopt a version of IFRS.

The United States could be next. In 2007, the SEC sought comment on two policy proposals related to the convergence of global financial reporting standards. One was a proposed rule that would permit foreign companies that issue securities in U.S. markets to prepare their financial statements in accordance with IFRS. The SEC also issued a concept release that proposed letting U.S. companies prepare their financial statements using either IFRS or U.S. Generally Accepted Accounting Principles (GAAP).

Allowing IFRS to be used in the United States is controversial. Proponents argue that it would allow investors to compare financial statements of companies worldwide seamlessly, at lower cost and with less risk of error. Opponents believe IFRS are not as high-quality as GAAP and that permitting their use would entail costly retraining by U.S. accountants and auditors as well as an overhaul of university curricula. Critics also contend that there would continue to be a severe lack of consistency in the implementation, interpretation and enforcement of IFRS standards worldwide. The Council has not taken a position on the adoption of IFRS for the United States, but has worked to help members gain an understanding of different perspectives on the issue.

- ? *What actions should the SEC take to assist U.S. investors, financial statement preparers and auditors to better understand international financial reporting standards?*
- ? *Should the SEC propose a rule that would give registered companies that are headquartered in the U.S. the option of reporting under IFRS rather than U.S. GAAP? Why or why not?*
- ? *What actions should the SEC take to ensure that the IASB has the expertise, resources and independence necessary to establish high-quality accounting standards for companies listing in the U.S.?*

Broker Voting: The Council has long opposed the broker-may-vote rule and has pressed repeatedly for it to be abolished. Allowing brokers to cast votes for uninstructed shares skews voting results and is akin to stuffing the ballot box for management as broker votes almost always are cast in favor of management's proposals and candidates for board seats.

The April 15, 2008, board elections at Washington Mutual raised fresh concern about the way broker votes can taint elections. One director resigned after Washington Mutual reported that shareowners had withheld 49.9 percent of votes for her. Some Washington Mutual shareowners, however, suspect that one or more directors who ran for re-election would not have received majority support if uninstructed broker votes had been excluded from the tally.

The Council sent a letter to Washington Mutual asking the board to clarify the preliminary vote totals for the director elections by promptly disclosing the results excluding uninstructed broker votes. The Council also wrote to SEC Chair Christopher Cox expressing concern that the commission has not acted on the NYSE's October 2006 proposal to eliminate uninstructed broker votes in director elections. Council members also have sent similar letters to Washington Mutual and the SEC.

- ? *Where do you stand on the NYSE's proposal to eliminate broker votes for uninstructed shares in director elections?*
- ? *What steps would you take to ensure that future rulemaking proposals and petitions are addressed in a timely manner?*

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Shareowner Access to Company Proxy Materials to Nominate Directors: At a November 28 open meeting, the SEC voted 3 to 1 to pass a proposal that bars shareowners from submitting resolutions that ask or require a corporate board to let owners place their nominees for directors alongside the board's on the company's proxy card. At the meeting, Cox promised that the commission would continue to work toward the adoption of another proxy access proposal before the 2009 proxy season.

Despite the SEC's November vote barring the proposals, several Council members banded together to submit shareowner resolutions at a handful of companies to permit an investor or investor group holding at least 3 percent of the company's outstanding stock for at least two years to nominate up to two director candidates. However, the SEC allowed the companies to exclude the resolutions from their proxy statements.

? *Do you believe the SEC should approve a rule giving shareowners a degree of access to company proxy materials to nominate directors? Why or why not?*

Attached for your reference is the Council's "2008 SEC Issues Briefing Book," which contains additional information about these and other crucial capital markets issues. Thank you for your attention to these matters—your support is deeply appreciated. If you have any questions, please feel free to contact me or Jeff Mahoney, our general counsel, at (202) 822-0800.

Sincerely,



Ann Yerger
Executive Director

cc: The Honorable Richard Shelby
Ranking Minority Member
Banking, Housing, and Urban Affairs Committee

The Honorable Jack Reed
Chairman
Securities, Insurance and Investment Subcommittee

The Honorable Wayne Allard
Ranking Minority Member
Securities, Insurance and Investment Subcommittee