

**Council of Institutional Investors (“Council”)  
Comment Letter on  
Securities and Exchange Commission (“Commission”) Proposed Rule  
*Facilitating Shareholder Director Nominations*  
Summary of Key Points  
August 4, 2009**

- We wholeheartedly agree with the Commission that there is an urgent need to amend the proxy rules to better facilitate the exercise of shareowners’ fundamental rights to nominate and elect directors. The Council therefore strongly supports the Commission’s proposed rule.
- Adoption of the proposed rule would be one of the most significant investor reforms in decades—a desperately needed boost to investor confidence. The Council applauds the SEC for its leadership on this important issue.
- The financial crisis has highlighted a longstanding concern of investors—directors not doing the jobs expected by their employers, the shareowners. Exacerbating this underperformance is a deeply flawed director nomination process that impedes genuine board accountability.
- Shareowners can now only ensure that their director candidates get full consideration by launching an expensive and complicated proxy fight. Management, meanwhile, can freely tap company coffers to fund campaigns for board-recommended candidates.
- Companies often erect various obstacles, including expensive litigation, to thwart investors running proxy fights. This skewed playing field discourages investors from undertaking valuable steps to hold management and boards accountable.
- The Council believes reasonable access to corporate proxy materials for long-term shareowners would address some of the problems surrounding director elections. Such access would significantly enhance the U.S. corporate governance model.
- While the specific numeric formulation of the Council’s proxy access policy differs from the proposed rule, the underlying principles are essentially the same:
  - Only large, long-term shareowners or groups of shareowners should have a reasonable degree of access to company proxy materials to nominate director candidates
  - The access mechanism should not be used to affect a change of control, and
  - Full and accurate disclosures about the access mechanism users and the director nominees should be required.

## Key Aspects of the Proposed Rule

- *Application of the Rule:* Long-term investors, companies, and the capital markets would benefit from a uniform proxy access rule, as proposed.
- *Shareowner Eligibility Criteria:* The Commission's proposed shareowner eligibility criteria, although not identical to the Council's proxy access policy, are generally appropriate and workable.
- *Calculating Ownership:* While the Council generally supports the proposed eligibility threshold based on the percentage of securities owned and entitled to vote on the election of directors, we encourage the Commission to clarify the computation of the percentage to address common fluctuations in ownership resulting from rebalancing, share lending, and other routine investment activities.
- *Holding Period Requirement:* Although the Council's proxy access policy provides for a holding period of "at least two years," we do not disagree with the Commission's conclusion that a one year holding requirement should be sufficient to limit the access mechanism to long-term shareowners.
- *Nominee Eligibility Criteria:* The Council believes the proposed rule is generally consistent with our view that shareowner nominees should qualify as independent under relevant objective stock exchange listing standards. Additional limitations on nominee eligibility beyond those currently included would be inappropriate and would impose unnecessary burdens on nominating shareowners.
- *Nominee Independence:* The Council strongly opposes requiring shareowner-suggested nominees to be independent of the nominating shareowner or group. Concerns over potential "special interest" directors are exaggerated.
- *Nomination Limits:* A proxy access mechanism should not be structured to permit a shareowner or group to unseat an entire board or facilitate a change in control. While our policy only specifies that shareowners should have the right to include less than a majority of the board in management's proxy materials, the Council nevertheless believes that any maximum percentage limiting the amount of nominations should ensure that investors can nominate at least two candidates in all cases.
- *Incumbent Shareowner Nominees:* Incumbent directors nominated using the proposed proxy access mechanism should only be counted for purposes of determining the maximum number of shareowner nominees in cases when use of the proxy access mechanism could potentially result in shareowner nominees accounting for one-half or more of the board.
- *First-in Approach:* The Council opposes a "first-in" approach for determining which nominees are to be included in the company proxy materials as this would likely cause a pointless and potentially harmful race to be the first to file. What matters most is not who

is the fastest to nominate, but what investor or group has the greatest stake in the director election and ultimately, the long term performance of the company.

- *Rule 14a-8(i)(8)*: While proposed Rule 14a-11 would go a long way to removing impediments to the exercise of shareholders' rights to nominate and elect directors, the Council strongly supports the proposed amendment to Rule 14a-8(i)(8) as a critical supplement. In our view, shareowners should be permitted to submit non-binding proposals or mandatory bylaw amendments supporting a stronger proxy access mechanism than the baseline offered by Rule 14a-11.