



June 3, 2010

The Honorable Barney Frank  
Chairman  
House Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, DC 20515

The Honorable Spencer Bachus  
Ranking Member  
House Committee on Financial Services  
B371a Rayburn House Office Building  
Washington, DC 20515

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

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

Dear Messrs. Frank, Bachus, Dodd, and Shelby:

As financial regulatory reform legislation advances to conference, I am writing on behalf of the Council of Institutional Investors (“Council”) in strong support of language adopted by both the House and Senate strengthening corporate governance. A nonprofit association of public, union and corporate pension funds with combined assets that exceed \$3 trillion, the Council represents major, long-term investors with a duty to protect the retirement savings of millions of American workers across the country. Significantly affected by the financial crisis, our member funds have a deep interest in meaningful financial regulatory reform.

By affirming the authority of the Securities and Exchange Commission (“SEC” or “Commission”) to issue a proxy access rule enhancing investors’ ability to nominate directors, nearly identical language included in sec. 7222 of the *Wall Street Reform and Consumer Protection Act of 2009* (H.R. 4173) and sec. 972 of the *Restoring American Financial Stability Act of 2010* (S. 3217) would help address the serious failures of corporate boards revealed amid the financial crisis. Consistent with the will of both houses of Congress, the Council strongly urges you to support this language and ensure that it is included in the final version of financial reform legislation.

While the Council is confident that the SEC already has the authority to implement proxy access, the Commission is nevertheless likely to face unnecessary, costly and time-consuming litigation challenging its final rule. Such litigation would benefit a handful of lawyers and many poorly performing corporate directors to the detriment of investors. Language affirming the SEC’s authority would ensure that owners of U.S. public companies face no needless delays in the implementation of this long-overdue and essential corporate governance reform.

The global financial crisis represents a massive failure of board oversight. Clearly corporate directors disregarded the interests of their shareowners by failing to adequately understand and monitor risk, and by awarding compensation packages producing outsized rewards for reckless behavior. Few meaningful remedies, however, are currently available to shareowners dissatisfied with management and board performance. In the words of Warren Buffett, directors at failed companies largely remain “unscathed.”<sup>1</sup> Financial regulatory reform must address this fundamental lack of accountability and market discipline.

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<sup>1</sup> Letter from Warren E. Buffett, Chairman of the Board, to the Shareholders of Berkshire Hathaway Inc., 16 (Feb. 26, 2010), [www.berkshirehathaway.com/letters/2009ltr.pdf](http://www.berkshirehathaway.com/letters/2009ltr.pdf).

By and large, the rules and regulations governing the capital markets deny shareowners a meaningful voice in monitoring corporate boards and in holding directors accountable. As the blue-ribbon Investors Working Group ("IWG") recently concluded in its July 2009 report, "U.S. Financial Regulatory Reform: The Investors' Perspective," investors lack the tools required to exercise even their most basic oversight duties:

But shareowners currently have few ways to hold directors' feet to the fire. The primary role of shareowners is to elect and remove directors, but major roadblocks bar the way. Federal proxy rules prohibit shareowners from placing the names of their own director candidates on proxy cards. Shareowners who want to run their own candidates for board seats must mount costly full-blown election contests.<sup>2</sup>

In light of these findings, the Council shares President Barack Obama's view that reforms are needed to "give shareholders new power in the financial system...so that investors and pension holders have a stronger role in determining who manages the companies in which they've placed their savings."<sup>3</sup> A measured right for significant long-term investors to place their board nominees on the company's proxy card, as proposed by the SEC, would overcome the obstacles identified by the IWG, invigorating board elections and making directors more responsive, thoughtful, and vigilant. Proxy access would finally give investors a tool they need to fulfill their oversight role as responsible corporate owners.

Corporate boards are the first line of defense against the risks and excesses that led to the global financial crisis. While more vigorous government regulation is surely needed, regulation alone cannot address all of the abuses that led to the crisis. By empowering long-term investors to hold corporate directors accountable, proxy access would help combat short-termism and address the failures of board oversight that contributed to the financial crisis, reducing the risk that such a crisis ever happens again.

Thank you for considering the views of the Council of Institutional Investors. We look forward to working with you as the House and Senate work to resolve differences on financial regulatory reform. If you have any questions, please do not hesitate to contact me at (202) 261-7081 or [jeff@cii.org](mailto:jeff@cii.org), or Council analyst Jonathan Urick at [jonathan@cii.org](mailto:jonathan@cii.org) or (202) 261-7096.

Sincerely,



Jeff Mahoney  
General Counsel  
Council of Institutional Investors

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<sup>2</sup> Investors Working Group, "U.S. Financial Regulatory Reform: The Investors' Perspective" (July 2009), at 22, [www.cii.org/UserFiles/file/IWGreport.pdf](http://www.cii.org/UserFiles/file/IWGreport.pdf). For more information, please visit [www.cii.org/iwgInfo](http://www.cii.org/iwgInfo).

<sup>3</sup> President Barack Obama. "Remarks by the President on Wall Street Reform." Cooper Union, New York, NY. 22 Apr. 2010. White House Office of the Press Secretary. [www.whitehouse.gov/the-press-office/remarks-president-wall-street-reform](http://www.whitehouse.gov/the-press-office/remarks-president-wall-street-reform).