



Via Facsimile

March 19, 2010

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

Dear Mr. Chairman:

I am writing on behalf of the Council of Institutional Investors (“Council”), a nonprofit association of public, union and corporate pension funds with combined assets that exceed \$3 trillion.¹ Member funds are major shareowners with a duty to protect the retirement assets of millions of American workers located across the country. For example, our member funds include both the Connecticut Retirement Plans and Trust Funds, and the Idaho Public Employee Retirement System.

As a leading voice for long-term, patient capital, the Council supports your comprehensive efforts to reform the regulation of the United States (“US”) financial system. In particular, the Council is most encouraged that your Committee Print of the Restoring American Financial Stability Act of 2010 (“Act”) continues to include reforms designed to strengthen corporate governance.²

It is well recognized that poor oversight by corporate boards directly contributed to the financial crisis.³ In order to restore trust and better ensure that such a crisis is unlikely to reoccur, investors must be given the tools necessary to guarantee robust oversight and meaningful accountability of corporate directors. Sections 971 and 972 of the Act are critical to providing investors those tools because those provisions focus on the most fundamental of investor rights—the right to nominate and elect directors.⁴

¹ For more information about the Council of Institutional Investors, please see our website at www.cii.org.

² Comm. on Banking, Hous., and Urb. Aff., 111th Cong., Restoring American Financial Stability Act of 2010, at 895-99 (Comm. Print 2010), <http://www.docstoc.com/docs/29509598/Restoring-American-Financial-Stability-Act-of-2010>.

³ See Letter from Warren E. Buffett, Chairman of the Board, to the Shareholders of Berkshire Hathaway Inc. 16 (Feb. 26, 2010), <http://www.berkshirehathaway.com/letters/2009ltr.pdf> (“The . . . directors of the failed companies, however, have largely gone unscathed. . . . [D]irectors have long benefited from oversized financial carrots; some *meaningful* sticks now need to be part of their employment picture as well”). See also A Report by the Investors’ Working Group, U.S. Financial Reform: The Investors’ Perspective 2 (July 2009), [http://www.cii.org/UserFiles/file/resource%20center/investment%20issues/Investors%20Working%20Group%20Report%20\(July%202009\).pdf](http://www.cii.org/UserFiles/file/resource%20center/investment%20issues/Investors%20Working%20Group%20Report%20(July%202009).pdf) (“The financial crisis represents a massive breakdown in oversight at many levels, including at corporate boards”).

⁴ Comm. on Banking, Hous., and Urban Affairs, at 895-99.

Reaffirming the US Securities and Exchange Commission's ("SEC" or "Commission") Authority

Section 972 of the Act reaffirms the SEC's authority to issue a uniform proxy access rule.⁵ Currently, the only way that shareowners can present alternative director candidates at a public company in the US is by waging a full-blown election contest. For most long-term investors that alternative is onerous and prohibitively expensive. A measured right for long-term investors to place their nominees for directors on the company's proxy card, as has been proposed by the Commission,⁶ would overcome these obstacles, invigorating board elections and making directors more responsive, thoughtful, and vigilant.

The Council believes that the Commission already has the authority to approve a uniform proxy access rule, as proposed.⁷ Some, however, apparently disagree. Thus, the Commission is likely to face unnecessary, costly and time-consuming litigation if they issue their final rule. Such litigation would benefit a handful of lawyers and many poorly performing directors to the detriment of investors. Section 972, if enacted, would ensure that owners of US companies face no further needless delays over this long sought after and essential governance reform.

Majority Voting for Election of Directors

Section 971 of the Act provides for majority voting for the election of directors in uncontested elections.⁸ Currently, the accountability of directors at most US companies is severely weakened by the fact that shareowners do not have a meaningful vote in director elections. Under most state laws, including Delaware, the default standard for uncontested elections is a plurality vote, which means that a director is elected even if a majority of the shares are withheld from the nominee.

⁵ *Id.* at 898-99.

⁶ Facilitating Shareholder Director Nominations, 74 Fed. Reg. 29,024 (June 18, 2009), <http://www.sec.gov/rules/proposed/2009/33-9046fr.pdf>.

⁷ Attachment to Comment Letter, File No. S7-10-09, from Jeff Mahoney to Elizabeth M. Murphy at B.1. (Aug. 4, 2009), [http://www.cii.org/UserFiles/file/resource%20center/correspondence/2009/August%204%202009%20SEC%20Proxy%20Access%20Comment%20Letter%20Attachment%20\(Final\)](http://www.cii.org/UserFiles/file/resource%20center/correspondence/2009/August%204%202009%20SEC%20Proxy%20Access%20Comment%20Letter%20Attachment%20(Final)) ("The Commission's authority to adopt the proposed rule is firmly rooted in its broad power under Section 14(a) of the Exchange Act to issue rules regarding solicitation of proxies "as necessary or appropriate in the public interest or for the protection of investors" (footnote omitted)).

⁸ Comm. on Banking, Hous., and Urban Affairs, at 895-898.

The Council has long believed that a plurality standard for the uncontested election of directors is inherently unfair and undemocratic and should be replaced by a majority vote standard.⁹ In recent years, many companies, including more than two-thirds of the S&P 500 have agreed with the Council and have voluntarily adopted majority voting standards.¹⁰ At most public companies, however, plurality voting still remains the rule. For example, nearly three-quarters of the companies in the Russell 3000 continue to use a straight plurality voting standard for director elections.¹¹

The benefits of moving to a majority voting standard are many: it would democratize the corporate electoral process; put real voting power in the hands of investors; and make boards more representative of shareowners. Simply stated, Section 971, if enacted, would eliminate a fundamental flaw in the US governance model.

The Council appreciates your strong leadership in the effort to comprehensively reform and strengthen the regulation of the US financial system. We remain encouraged that many institutional investor reform priorities are reflected in the Act, including provisions intended to strengthen the oversight and accountability of credit rating agencies, establish meaningful regulation of trading in over-the-counter derivatives, and bolster the resources and independence of the SEC. We look forward to continuing to work with you, Ranking Member Shelby, and other members of the Committee to further improve and enact this important legislation.

In closing, we wish to reiterate our strong support for Sections 971 and 972 of the Act, and we respectfully request that you oppose any amendments to strike or weaken those provisions. If you have any questions about the Council's views on the Act, or if we can be of any assistance, please do not hesitate to contact me at (202) 261-7081 or jeff@cii.org.

Sincerely,



Jeff Mahoney
General Counsel
Council of Institutional Investors

CC: The Honorable Richard C. Shelby, Ranking Member, Committee on Banking, Housing, and Urban Affairs

⁹ The Council of Institutional Investors, Corporate Governance Policies, § 2.2 **Director Elections** (May 1, 2009), <http://www.cii.org/UserFiles/file/council%20policies/CII%20Full%20Corp%20Gov%20Policies%205-7-09.pdf> ("charters and bylaws should provide that directors in uncontested elections are to be elected by a majority of the votes cast").

¹⁰ Corporate Governance after *Citizens United*, Hearing before the H. Subcomm. on Cap. Markets, Ins., and Gov't Sponsored Enterprises of the Comm. on Fin. Serv., 111th Cong. 12 (Mar. 11, 2010) (Testimony of Ann Yerger, Executive Director, Council of Institutional Investors), <http://www.cii.org/UserFiles/file/03-11-10%20AY%20Political%20Contributions%20Testimony.pdf>.

¹¹ *Id.*