



Via Hand Delivery

August 3, 2010

The Honorable Mary L. Schapiro
Chairman
United States Securities and Exchange Commission

Dear Madam Chairman:

I am writing on behalf of the Council of Institutional Investors (“Council”), an association of public, corporate and union pension funds with combined assets of over \$3 trillion. As a leading voice for long-term investors, the Council reaffirms our commitment to you and the United States Securities and Exchange Commission (“Commission”) to continue to provide thoughtful input to your process as you begin to implement the many important and challenging changes required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Act”).

We note that in your recent comments on the Act you stated that:

key provisions of the Act . . . confirm the Commission’s authority to adopt rules that facilitate shareholders’ ability to nominate director candidates. As you know, our proposal on this subject has been out for some time. I am committed to bringing a final rule to the Commission for consideration so that rules will generally be in effect in time for 2011 proxy season.¹

As you are aware, the Council was a strong proponent of the provision of the Act (Sec. 971) that reaffirmed the Commission’s authority to issue a uniform proxy access rule.² The prompt and cost-effective implementation of a final uniform proxy access rule remains a top priority of Council members.

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¹ Mary L. Schapiro, Chairman, Sec. & Exch. Comm’n, Ctr. for Capital Mkt. Competitiveness, U.S. Chamber of Commerce, *Moving Forward: The Next Phase In Financial Regulatory Reform* 5-6 (July 27, 2010), <http://www.sec.gov/news/speech/2010/spch072710mls.htm>.

² See, e.g., Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors to The Honorable Barney Frank *et al.* 1 (June 3, 2010), <http://www.cii.org/UserFiles/file/resource%20center/correspondence/2010/06-3-10%20Proxy%20Access%20Conference%20Committee%20Letter.pdf> (“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 basis for the Council's long-time support for a uniform proxy access rule is derived from the following membership approved policy:

3.2 Access to the Proxy: Companies should provide access to management proxy materials for a long-term investor or group of long-term investors owning in aggregate at least three percent of a company's voting stock,³ to nominate less than a majority of the directors. Eligible investors must have owned the stock for at least two years.⁴ Company proxy materials and related mailings should provide equal space and equal treatment of nominations by qualifying investors.

To allow for informed voting decisions, it is essential that investors have full and accurate information about access mechanism users and their director nominees. Therefore, shareowners nominating director candidates under an access mechanism should adhere to the same SEC rules governing disclosure requirements and prohibitions on false and misleading statements that currently apply to proxy contests for board seats.⁵

³ We note that in our examination of the holdings of the ten largest public pension funds in a sample of twenty accelerated filers a three percent ownership threshold (ignoring any additional holding period requirement) would have only been met twice. *See, e.g.*, Letter from Jonathan D. Urick, Analyst, Council of Institutional Investors to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission 3 (Jan. 14, 2010) <http://www.cii.org/UserFiles/file/resource%20center/correspondence/2010/1-14-10%20Proxy%20Access%20Comment%20Letter.pdf> [Hereinafter Jan. 2010 Letter].

⁴ The two year holding period was based, in part, on the voting results from the 2007 annual meetings of several companies indicating that a three percent for two years formulation enjoyed significant shareowner support. Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission C.1. app. (Aug. 4, 2009), [http://www.cii.org/UserFiles/file/resource%20center/correspondence/2009/August%204%202009%20Proxy%20Access%20Cover%20Letter%20\(final\).pdf](http://www.cii.org/UserFiles/file/resource%20center/correspondence/2009/August%204%202009%20Proxy%20Access%20Cover%20Letter%20(final).pdf) [Hereinafter Aug. 2009 Letter].

⁵ Council of Institutional Investors, Corp. Governance Pol'y, Access to the Proxy § 3.2 (updated Apr. 13, 2010) (footnotes added), <http://www.cii.org/UserFiles/file/CII%20Corp%20Gov%20Policies%20Full%20and%20Current%204-13-10.pdf>.

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As explained in more detail in our comment letters in response to the Commission's proposed proxy access rule;⁶ we continue to believe that providing long-term shareowners with a reasonable access to corporate proxy materials in a manner generally consistent with the requirements of our policy will contribute to the strengthening of our capital markets by making boards more responsive to shareowners, more thoughtful about whom they nominate to serve as directors, and more vigilant in their oversight responsibilities.

We commend you for your commitment to finalizing a uniform proxy access rule for the 2011 proxy season. We look forward to continuing to work with you and the Commission in a successful implementation of the final rule. If we can provide you with any additional input or assistance in that process or on any other issues that come before the Commission, please do not hesitate to contact me at (202) 261-7081 or jeff@cii.org.

Sincerely,

Jeff Mahoney
General Counsel

CC: The Honorable Commissioner Luis A. Aguilar
The Honorable Commissioner Kathleen L. Casey
The Honorable Commissioner Troy A. Paredes
The Honorable Commissioner Elisse B. Walter

⁶ Jan. 2010 Letter, *supra* note 3, at 4; Aug. 4 Letter, *supra* note 4, at 2; *cf.* The Investors Working Group, U.S. Financial Regulatory Reform: The Investors' Perspective 23 (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) (“A measured right of access would invigorate board elections and make boards more responsive to shareowners, more thoughtful about whom they nominate to serve as directors and more vigilant in their oversight of companies”).