

The Investors' Working Group

Via Facsimile

February 23, 2010

The Honorable Christopher J. Dodd
Chairman
United States Senate Committee on Banking,
Housing and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510-6075

The Honorable Richard C. Shelby
Ranking Member
United States Senate Committee on Banking,
Housing and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510-6075

Dear Chairman Dodd and Ranking Member Shelby:

It is our understanding that you recently received a letter from some business groups raising issues about the corporate governance provisions contained in the initial Committee Print of the "Restoring American Financial Stability Act of 2009" ("Act"). We write to strongly urge you to retain the corporate governance provisions contained in the Act. Those important reforms, particularly the provisions on proxy access (Sec. 972) and majority voting for directors (Sec. 971), are critical to providing investors the tools necessary to hold managers and directors accountable for their actions and to helping restore trust in the U.S. financial markets. Those reforms are also generally consistent with the findings and recommendations of the Investors' Working Group ("IWG").

An independent blue ribbon panel of industry and market experts created by the CFA Institute and the Council of Institutional Investors to study and report on financial regulatory reform from the viewpoint of investors, the IWG carefully considered the need to improve corporate governance practices in response to the credit crisis. That consideration resulted in a number of findings and specific recommendations included in the IWG's July 2009 report – *U.S. Financial Regulatory Reform: The Investors' Perspective* ("IWG Report").

IWG findings relevant to the need for corporate governance reforms include the following:

The global financial crisis represents a massive failure of oversight. Vigorous regulation alone cannot address all of the abuses that paved the way to financial disaster. Shareowner-driven market discipline is also critical. Too many CEOs pursued excessively risky strategies or investments that bankrupted their companies or weakened them financially for years to come. Boards were often complacent, failing to challenge or rein in reckless senior executives who threw caution to the wind. And too many boards approved executive compensation plans that rewarded excessive risk-taking.

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. Another wrinkle in the proxy voting system is that relatively few U.S. companies have adopted majority voting for directors. Most elect directors using the plurality standard, by which shareowners may vote for, but not against, a nominee. If they oppose a particular nominee, they may only withhold their votes. As a consequence, a nominee only needs one "for" vote to be elected and unseating a director is virtually impossible.

Consideration of the above findings led the IWG to propose a number of specific recommendations in the area of corporate governance. Those recommendations include the following:

1. In uncontested elections, directors should be elected by a majority of votes cast. At many U.S. public companies, directors in uncontested elections are elected by a plurality of votes cast. An uncontested election occurs when the number of director candidates equals the number of available board seats. Plurality voting in uncontested situations results in "rubber stamp" elections. Majority voting in uncontested elections ensures that shareowners' votes count and makes directors more accountable to shareowners. Plurality voting for *contested* elections should be allowed because investors have a more meaningful choice in those elections.

2. Shareowners should have the right to place director nominees on the company's proxy. In the United States, unlike most of Europe, the only way that shareowners can run their own candidates is by waging a full-blown election contest, printing and mailing their own proxy cards to shareowners. For most investors, that is onerous and prohibitively expensive. 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. Federal securities laws should be amended to affirm the SEC's authority to promulgate rules allowing shareowners to place their nominees for directors on the company's proxy card.

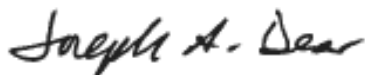
More details regarding the background and basis for the above findings and recommendations and other corporate governance recommendations of the IWG can be found on pages 22 & 23 of the IWG Report available in electronic form at <http://www.cii.org/UserFiles/file/IWGREport.pdf>.

Thank you for your consideration of the IWG views in connection with this very important element of regulatory reform. As always, we would welcome the opportunity to have members of the IWG discuss these issues with you or your staff at your convenience. Please feel to contact Jeff Mahoney at 202.261.7081 or jeff@cii.org to arrange for such a meeting or if you should have any questions or comments regarding this letter.

Sincerely,



Kurt N. Schacht, CFA
Managing Director, CFA Institute Centre for
Financial Market Integrity
Co-Sponsor, Investors' Working Group



Joseph A. Dear
Chair, Council of Institutional Investors
Co-Sponsor, Investors' Working Group



Council of Institutional Investors
The Voice of Corporate Governance



About the Investors' Working Group: The Investors' Working Group (IWG) is an independent, nonpartisan commission co-sponsored by the Council of Institutional Investors and the CFA Institute to recommend ways to improve the regulation of U.S. financial markets. The IWG was established to ensure that investor views are heard in debate about how to modernize the financial regulatory system. Co-chairs of the IWG are William H. Donaldson, CFA, and Arthur Levitt Jr.

About the IWG sponsors: The [Council of Institutional Investors](#) is a nonprofit association of public, union and corporate pension funds with combined assets that exceed \$3 trillion. The Council is a leading voice for good corporate governance, strong shareowner rights and related investment issues. [CFA Institute](#) is the global association for investment professionals. It administers the CFA and CIPM curriculum and exam programs worldwide; publishes research; conducts professional development programs; and sets voluntary, ethics-based professional and performance-reporting standards for the investment industry.