

# COUNCIL OF INSTITUTIONAL INVESTORS

---

Suite 500 • 888 17<sup>th</sup> Street, NW • Washington, DC 20006 • (202) 822-0800 • Fax (202) 822-0801 • [www.cii.org](http://www.cii.org)

## Via Hand Delivery

August 8, 2007

The Honorable Christopher Cox  
Chairman  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

*Re: July 25, 2007, Securities and Exchange Commission (“SEC” or  
“Commission”) Open Meeting: “Meeting the Competitive Challenges of the  
Global Marketplace” (“July 25<sup>th</sup> Meeting”)*

Dear Mr. Chairman:

I am writing on behalf of the Council of Institutional Investors (“Council”), an association of more than 130 public, corporate, and union pension funds with combined assets of over \$3 trillion. As a leading voice for long-term, patient capital, the Council has long advocated a policy that “shareowners should have meaningful opportunities to suggest or nominate director candidates and to suggest processes and criteria for director selection and evaluation.”<sup>1</sup> Thus, the SEC’s July 25<sup>th</sup> Meeting and the resulting proposed rules: (1) Shareholder Proposals (File Number S7-16-07) and (2) Shareholder Proposals Relating to the Election of Directors (File Number S7-17-07) are of great interest to our members.

---

<sup>1</sup> Council of Institutional Investors (“Council”), Annual Report, at 34 (Jan. 2007).

August 8, 2007

Page 2 of 3

In observing the July 25<sup>th</sup> Meeting, it was our understanding that, in response to questions raised by Commissioner Roel C. Campos, the SEC staff indicated that they would maintain the status quo and *would not* resume issuing no-action letters permitting the exclusion of shareowner resolutions on proxy statement access for board nominations *unless* a final rule is adopted which makes exclusions of such resolutions permissible. We, therefore, were surprised and concerned by Commissioner Paul S. Atkins' recent remarks on this issue before the Federal Reserve Bank of Chicago. Those remarks include the following statement about the July 25<sup>th</sup> Meeting:

We specifically adopted a current interpretation of the director election exclusion that is consistent with the SEC's long-standing interpretation and the interpretation that we put forward to the Second Circuit. As directed by the court, we have provided a thorough explanation for that position. This interpretation, *which now governs our administration of that provision*, will provide the necessary clarity and uniformity for both investors and companies alike *until an amendment is adopted in the future*.<sup>2</sup>

Commissioner Atkins' remarks appear to be in direct conflict with statements made by the SEC staff at the July 25<sup>th</sup> Meeting. Given the importance of this issue to the Council and its members,<sup>3</sup> we would respectfully request that you please clarify whether the SEC staff will resume issuing no-action letters permitting the exclusion of shareowner resolutions on proxy statement access for board nominations in the absence of a final rule on the Commission's proposals.

---

<sup>2</sup> Commissioner Paul S. Atkins, Remarks Before the Federal Reserve Bank of Chicago Seventh Annual Private Equity Conference 6 (Aug. 2, 2007), *available at* <http://www.sec.gov/news/speech/2007/spch080207psa.htm> (emphasis added).

<sup>3</sup> As you may be aware, the Council filed a brief as *amicus curiae* in support of Plaintiff-Appellant in *American Federation of State, County & Municipal Employees Pension Plan v. American International Group, Inc.* (2d Cir. 2005) (No. 05-2825).

August 8, 2007

Page 3 of 3

Thank for your attention to this matter. We look forward to your reply.

Sincerely,

A handwritten signature in cursive script that reads "Jeff Mahoney".

Jeff Mahoney  
General Counsel

CC: Commissioner Paul S. Atkins  
Commissioner Roel C. Campos  
Commissioner Kathleen L. Casey  
Commissioner Annette L. Nazareth  
Director John W. White, Division of Corporation Finance  
General Counsel Brian G. Cartwright, Office of General Counsel  
Senator Christopher J. Dodd, Chairman, Committee on Banking, Housing, and  
Urban Affairs  
Senator Richard C. Shelby, Ranking Member, Committee on Banking, Housing,  
and Urban Affairs  
Representative Barney Frank, Chairman, Committee on Financial Services  
Representative Spencer Bachus, Ranking Member, Committee on Financial  
Services