

**SEC Chair Candidate Issues  
March 11, 2013**

**Corporate Governance**

It has been well established that a key cause of the financial crisis was a failure in corporate governance. Congress responded, in part, by including in Subtitles E and G of Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) a number of measures designed to improve the governance practices of public companies. However, more than two years since the passage of Dodd-Frank several of those improvements have yet to be implemented by the Securities and Exchange Commission (“SEC” or “Commission”).

- ? *If confirmed, would you direct the Commission to promptly complete its rulemaking efforts to implement the remaining corporate governance improvements contained in Dodd-Frank, and if so, on what timeline?*

**Insider Trading**

An article in the Wall Street Journal (“WSJ”) last November examined thousands of instances since 2004 when corporate executives made trades in their companies’ stocks during the five trading days before the companies released material, potentially market moving news. Those trades exposed a number of shortcomings to SEC Rule 10b5-1—a rule that was intended, in part, to deter insiders from trading while in possession of nonpublic information. On December 28<sup>th</sup> the Council of Institutional Investors (“CII”) issued a letter to SEC Chairman Walter requesting that the Commission consider pursuing interpretive guidance or amendments to Rule 10b5-1 to address the abuses that the WSJ and others have identified.

As a leading voice for long-term patient capital, CII, consistent with our membership approved policies, strongly believes that clear guidelines regarding the circumstances in which a Rule 10b5-1 plan may be adopted, modified or cancelled, as well as enhanced transparency regarding the existence of such plans would have meaningful benefits for public companies, their long-term shareowners and the investing public. We also believe that such guidelines, whether in the form of additional interpretive guidance or an amendment to Rule 10b5-1 itself, are essential to restoring public confidence with respect to purchases and sales of a company’s securities by its insiders.

- ? *If confirmed, will you aggressively pursue the rulemaking petition of the Council of Institutional Investors to improve Rule 10b5-1 and prevent corporate insiders from taking advantage of their access to material nonpublic information to the detriment of investors and market confidence?*

### **Cost-Benefit Analysis and SEC Rulemaking**

The SEC is the only independent federal agency whose mission includes the protection of investors. The Commission's rulemaking process is governed by a number of legal requirements, including those under the federal securities laws, the Administrative Procedure Act, the Paperwork Reduction Act of 1980, the Small Business Regulatory Enforcement Fairness Act of 1996, and the Regulatory Flexibility Act. Moreover, under the federal securities laws the SEC is generally required to consider whether its rulemakings are in the public interest and, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

Since the 1980's, the Commission has conducted, to the extent possible, a systematic analysis of the costs and benefits of its proposed rules. That analysis was recently positively reviewed by the U.S. Government Accountability Office ("GAO") and the SEC's Office of Inspector General. Moreover, in response to comments reviewed from those reviews, recent court decisions, and communications with Members of Congress, the Commission has continued to make further enhancements to the SEC's rulemaking process—a process that is, and has long been, far more extensive than that of any other financial regulator.

It is, as best, unclear whether devoting ever more resources to evaluating the benefits and costs of Commission rulemaking will benefit long-term investors and the capital markets or simply delay needed improvements to SEC rules and a weakening in investor confidence.

- ? *If confirmed, will you ensure that the Commission's rulemaking process is not unduly hampered by so-called cost benefit analyses that neither measure costs nor benefits, but far too frequently unnecessarily delay and weaken needed improvements to SEC rules?*