Via Email

October 25, 2012

Mr. Norman M. Monhait
Rosenthal, Monhait & Goddess, P.A.
919 N. Market Street
Suite 1401
Wilmington, DE 19899

*Re: Voting by Shareowners for the Election of Directors*

Dear Mr. Monhait:

I am writing to you in your capacity as chair of the Council of the Corporate Law Section of the Delaware State Bar Association ("Council") on behalf of the Council of Institutional Investors ("CII"). The purpose of this letter is to respectfully request that the Council propose amendments to the Delaware General Corporation Law ("DGCL") to require majority voting in the uncontested election of directors at public companies.

Founded in 1985, CII is a nonprofit, nonpartisan association of public, corporate and union employee benefit plans, foundations and endowments with combined assets that exceed $3 trillion. Our members are large, long-term shareowners responsible for safeguarding the retirement savings of millions of American workers.[1]

As you may be aware, in a letter dated August 11, 2011, CII respectfully requested that the Council "consider recommending to the Delaware legislature an amendment to Section 216(3) of the DGCL to provide for majority voting as the default standard in director elections"[2] Our letter provided a detailed basis explaining why the adoption of such an amendment would be an important corporate governance reform.[3]

In the Council's response letter dated January 23, 2012, it was indicated that the Council had rejected CII's request by noting that the "Council has determined not

[1] For more information about the Council of Institutional Investors ("CII") and its members, please visit CII's Web site at http://www.cii.org/about.
[2] Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors to Mr. Frederick H. Alexander, Morris, Nichols, Arsht & Tunnell LLP 1 (Aug. 11, 2011), http://www.cii.org/UserFiles/file/resource%20center/correspondence/2011/August%2011%202011%20Delaware%20%20Letter%20(final).pdf.
[3] *Id.* at 7 (concluding that, consistent with CII membership approved policies, "[s]uch an amendment would better reflect the fundamental right and desire of shareowners' to have a meaningful voice in director elections and the growing trend among prominent, well-respected corporations to adopt this key corporate governance reform").

to propose an amendment to Section 216(3) of the Delaware General Corporation Law . . . ."[4] The letter explained that the Council's rejection of our request was based, at least in part, on the "complex" and "somewhat elaborate drafting" that would be required to make such a proposed change to the default standard under the DGCL.[5] After careful study of the Council's rejection letter we believe we have simplified and improved upon our earlier request in at least two important respects:

First, rather than requesting a change to the DGCL default rule, we are now requesting a far more straight forward improvement to the DGCL in the form of revisions to require majority voting for the uncontested election of directors at public companies.

Second, and perhaps more importantly, we have substantially lessened the Council's burden by commissioning a corporate law expert to assist us in drafting the necessary changes to the DGCL in support of our request. Those proposed revisions, including explanatory commentary, are included as an attachment to this letter for the Council's consideration.

Under the proposed majority voting regime set forth in the attachment, if a director fails to receive the affirmative vote of more shares in favor of that director's continuing service than opposed, the director is not elected. If, as a result, there is a failure to elect sufficient directors to constitute a lawful board according to the company's organizing documents, plurality voting rules would permit the existing board to be reconstituted for a 90-day holdover period.

During the holdover period, those directors who had received a majority of affirmative votes would appoint the number of directors necessary to constitute a lawful board. Importantly, those directors who had not received a majority of affirmative votes would not be eligible to be reappointed to fill the vacant seats.[6]

We believe the proposed revisions to the DGCL as described in the attachment are operational, reflect the fundamental right and desire of shareowners to have a meaningful voice in director elections, and strike the appropriate balance between

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[4] Letter from Frederick H. Alexander, Morris, Nichols, Arsht & Tunnell LLP to Jeff Mahoney, Esquire, General Counsel, Council of Institutional Investors 1 (Jan. 23, 2012), http://www.cii.org/UserFiles/file/resource%20center/correspondence/2012/01-13-12%20DC%20Bar%20response%20to%20CII%2008-11-11%20letter%20on%20majority%20voting.pdf.

[5] *Id.* at 4.

[6] This provision would prohibit the existing indefensible practice of directors continuing to serve on boards even after a majority of shareowners have withheld their vote for those directors. IRRC Institute & GMI Ratings, The Election of Corporate Directors: What Happens When Shareowners Withhold a Majority of Votes from Director Nominees? 2 (Aug. 2012), http://gmitest.net/wp-content/uploads/2012/08/GMIRatings_IRRC_082012.pdf (study finding that "[o]nly 5% of the majority withhold votes . . . led directly to director removal").

board power and board accountability. We, however, would welcome the opportunity to meet with you or the Council in person to discuss the proposed amendments in more detail. In the meantime, if you have any questions, please do not hesitate to contact me directly at 202.261.7081 or jeff@cii.org.

Sincerely,

Jeff Mahoney
General Counsel

Attachment