



## Via Hand Delivery

July 23, 2012

The Honorable Mary L. Schapiro  
Chairman  
United States Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Dear Madam Chair:

I am writing on behalf of the Council of Institutional Investors. The Council is a nonprofit, nonpartisan association of public, union and corporate employee benefit funds with combined assets that exceed \$3 trillion. Member funds are major long-term shareowners with a duty to protect the assets of millions of American workers and retirees.<sup>1</sup>

Two years ago, with the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”),<sup>2</sup> Congress and the Administration took a significant step forward in helping to restore trust in the U.S. financial markets and strengthen investor protections.<sup>3</sup> Like most Americans, Council members continue to strongly support the effective implementation and active enforcement of the protections contained in Dodd-Frank.<sup>4</sup>

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<sup>1</sup> Additional information about the Council of Institutional Investors (“Council”) and its members is available from the Council’s Web site at <http://www.cii.org/CouncilMembers>.

<sup>2</sup> The Dodd–Frank Wall Street Reform and Consumer Protection Act, [Pub.L. 111-203](http://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf) (July 21, 2010), <http://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf>.

<sup>3</sup> Press Release, Council of Institutional Investors, CII Welcomes Senate Passage of Financial Reform (July 15, 2010), <http://www.cii.org/UserFiles/file/news/07-15-10%20Reg%20Reform%20Press%20Release%20Final.pdf>.

<sup>4</sup> *See, e.g.*, Press Release, AARP-AFR-CRL-NCLR, Dodd Frank Anniversary Poll: Three Out of Four Voters Favor Strong Oversight of Wall Street 1 (July 18, 2012), <http://www.prnewswire.com/news-releases/dodd-frank-anniversary-poll-three-out-of-four-voters-favor-strong-oversight-of-wall-street-162879516.html> (“this survey clearly demonstrates that the 50 plus population wants the protections afforded by the Dodd-Frank Wall Street Reform and Consumer Protection Act [“Dodd-Frank”] to be implemented and enforced, and that more accountability will be required to adequately protect their hard earned financial assets”).

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Our support for Dodd-Frank and strong financial regulatory reform has only been heightened by the recent revelations that one bank has admitted to and others are being investigated for manipulating the London Interbank Offered Rate. Moreover, another bank recently suffered a \$6 billion trading loss, in part, because of poor risk management and oversight.<sup>5</sup>

Despite the lack of independent and adequate funding and the aggressive lobbying tactics by the banking industry and other special interests that oppose strong financial regulatory reform, the Securities and Exchange Commission (“Commission”) under your leadership should be commended for the progress that has been made in implementing the more than ninety rulemaking requirements that Dodd-Frank assigned to the Commission.<sup>6</sup> Many important implementing rules, however, have yet to be finalized or even proposed.<sup>7</sup>

It has been well established that a key cause of the financial crisis was a failure in corporate governance.<sup>8</sup> Congress responded by including in Subtitles E and G of Title IX of Dodd-Frank several measures designed to reform the governance practices of public companies.<sup>9</sup>

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<sup>5</sup> See, e.g., Former Senator Chris Dodd, Why Dodd-Frank Is Necessary, Politico 1 (July 22, 2012), <http://www.politico.com/news/stories/0712/78819.html> (noting that the recent “misdeeds [of banks] and more are making the strongest case for implementing Dodd-Frank”).

<sup>6</sup> See, e.g., Ronald D. Orol, Skepticism About Dodd-Frank Two Years On, MarketWatch 2 (July 20, 2012), [http://articles.marketwatch.com/2012-07-20/economy/32754426\\_1\\_dodd-frank-rules-derivatives-rules-financial-system/2](http://articles.marketwatch.com/2012-07-20/economy/32754426_1_dodd-frank-rules-derivatives-rules-financial-system/2) (noting that “lobbying by the banking sector continues to rise”).

<sup>7</sup> Davis Polk, Dodd-Frank Progress Report 9 (July 18, 2012), [http://www.davispolk.com/files/Publication/15a76992-d82a-4d15-a2db-fcde9effc3d0/Presentation/PublicationAttachment/b82f9d23-0edc-49eb-af02-ff97ff34bd56/071812\\_Dodd.Frank.Progress.Report.pdf](http://www.davispolk.com/files/Publication/15a76992-d82a-4d15-a2db-fcde9effc3d0/Presentation/PublicationAttachment/b82f9d23-0edc-49eb-af02-ff97ff34bd56/071812_Dodd.Frank.Progress.Report.pdf) (indicating that the Securities and Exchange Commission (“Commission”) has proposed 46 and finalized 28 of the 95 Dodd-Frank rulemaking requirements assigned to the Commission).

<sup>8</sup> See Financial Crisis Inquiry Commission, The Financial Crisis Inquiry Report *xviii-xix* (Jan. 2011) (“We conclude dramatic failures of corporate governance . . . were a key cause of this crisis.”); Grant Kirkpatrick, The Corporate Governance Lessons from the Financial Crisis 2 (Feb. 2009), <http://www.oecd.org/dataoecd/32/1/42229620.pdf> (“the financial crisis can be to an important extent attributed to failures and weaknesses in corporate governance arrangements”).

<sup>9</sup> [Pub.L. 111-203](#) §§ 951-957, 971-972.

Many of the corporate governance provisions contained in Dodd-Frank are generally consistent with Council membership approved policies<sup>10</sup> and the recommendations of the Investors' Working Group in its July 2009 report, "U.S. Financial Regulatory Reform: The Investor's Perspective,"<sup>11</sup> which Council members endorsed.<sup>12</sup>

In light of the clear linkage between the financial crisis and need for corporate governance reforms,<sup>13</sup> we would respectfully request that the Commission prioritize its future Dodd-Frank rulemaking to focus on proposing and adopting rules that implement the outstanding corporate governance provisions of Dodd-Frank in a high quality and effective manner that focuses on the needs and demands of investors.<sup>14</sup> As always, the Council and our membership stand ready to assist you in that effort.

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<sup>10</sup> Council of Institutional Investors, Corporate Governance Policies §§ 2.4, 3.2, 3.7, 5.2, 5.5 & 5.8 (updated Dec. 21, 2011), [http://www.cii.org/UserFiles/file/CII%20Corp%20Gov%20Policies%20Full%20and%20Current%2012-21-11%20FINAL%20\(2\).pdf](http://www.cii.org/UserFiles/file/CII%20Corp%20Gov%20Policies%20Full%20and%20Current%2012-21-11%20FINAL%20(2).pdf) (Council membership approved policies with the corresponding Section or Sections of Subtitles E and G of Title IX of Dodd-Frank in parentheses includes: § 5.2 **Advisory Shareowner Votes on Executive Pay** (§ 951); § 5.5 **Role of Compensation Committee** (§§ 952-954); § 5.8 **Long-term Incentive Compensation** (§§ 955-956); § 3.7 **Broker Votes** (§ 957); § 3.2 **Access to the Proxy** (§ 971); and § 2.4 **Independent Chair/Lead Director** (§ 972).

<sup>11</sup> Investors' Working Group, U.S. Financial Regulatory Reform: The Investors' Perspective 22-23 (July 2009), [http://www.cii.org/UserFiles/file/resource%20center/investment%20issues/Investors%27%20Working%20Group%20Report%20\(July%202009\).pdf](http://www.cii.org/UserFiles/file/resource%20center/investment%20issues/Investors%27%20Working%20Group%20Report%20(July%202009).pdf) (Investors' Working Group ("IWG") recommendations on corporate governance with the corresponding Section or Sections of Subtitles E and G of Title IX of the Dodd-Frank in parentheses includes: "Shareowners should have the right to place director nominees on the company's proxy" (§ 971); "Boards of directors should determine whether the chair and CEO roles should be separated or whether some other method, such as lead director, should be used to provide independent board oversight or leadership when required" (§ 972); "Exchanges should adopt listing standards that require compensation advisers to corporate boards to be independent of management" (§ 952); "Companies should give shareowners an annual advisory vote on executive compensation (§ 951); and "Federal clawback provisions on unearned executive pay should be strengthened" (§ 954). Of note, a provision consistent with IWG recommendations (p. 22) and Council membership approved policies (§ 2.2 **Director Elections**) requiring "the SEC to direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer who has on their board members that did not receive a majority vote in uncontested board elections" was, unfortunately, dropped from Dodd-Frank during the House-Senate Conference Committee despite broad support for the provision from investors. Comm. on Banking, Hous., & Urban Affairs, Rep. on The Restoring American Financial Stability Act 118 (Mar. 22, 2010), [http://banking.senate.gov/public\\_files/RAFSAPostedCommitteeReport.pdf](http://banking.senate.gov/public_files/RAFSAPostedCommitteeReport.pdf).

<sup>12</sup> Following its issuance, the IWG report was reviewed and subsequently endorsed by the Council's board and membership. Additional information about the IWG is available from the Council's Web site at <http://www.cii.org/iwgInfo>.

<sup>13</sup> See, e.g., Financial Crisis Inquiry Commission at xviii-xix.

<sup>14</sup> We continue to believe the Commission's corporate governance rulemaking should include, as authorized by § 971 of Dodd-Frank, the reissuance of a proxy access rule that sets uniform standards and requirements for access at all public companies. See, e.g., Press Release, Council of Institutional Investors, Council Statement on Shareowner Proposals Addressing Proxy Access (Nov. 28, 2011), <http://www.cii.org/UserFiles/file/11-28-11%20release%20on%20Council%20statement%20on%20access%20proposals.pdf> ("the Council will continue to actively encourage the SEC to give priority to the reissuance of a rule that sets uniform standards and requirements for proxy access at all public companies").

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If you or your staff has any questions about the Council's views on Dodd-Frank rulemaking, or any other matters, please do not hesitate to contact me at (202) 261-7081 or [jeff@cii.org](mailto:jeff@cii.org).

Sincerely,

A handwritten signature in blue ink that reads "Jeff Mahoney". The signature is written in a cursive, flowing style.

Jeff Mahoney  
General Counsel

cc: The Honorable Elisse B. Walter  
The Honorable Luis A. Aguilar  
The Honorable Troy A. Paredes  
The Honorable Daniel M. Gallagher