Council of Institutional Investors
The Voice of Corporate Governance

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Judith C. McLevey
VP, Corporate Actions & Market Watch
NYSE Euronext
20 Broad Street
New York, NY 10005

Dear Judy:

Thank you for taking the time to meet to discuss the Council of Institutional Investor's Oct. 2, 2012, letter requesting that the New York Stock Exchange prohibit companies seeking an initial listing from having two or more classes of common stock with unequal voting rights.

As discussed, CII has long held that multi-class stock structures with unequal voting rights are not in the long-term interest of investors or the markets. Indeed, one-share, one-vote was one of CII's first policies, approved shortly after the organization was founded in 1985. Due to their heavy use of passive strategies, CII members are unable to exercise the "Wall Street Walk" and simply sell if they are dissatisfied. As a result, their proxy votes are particularly important to them as a tool for holding directors accountable and having a say on major corporate issues.

I wanted to stress a few points as follow-up to our conversation:

1. The NYSE should strive for listing standards that enhance the accountability and integrity of publicly traded companies and preserve and strengthen investor confidence in the integrity of the markets. A change mandating one-share, one-vote for newly listed companies is clearly consistent with these important goals.

2. NYSE listing rules should set the gold standard for markets around the globe. In the case of multi-class common structures, the NYSE falls short of its primary global competitors—Hong Kong and London—which generally do not allow multi-class structures. CII strongly believes that a race to the bottom should not be the NYSE's mechanism for competing for listings.

3. CII's primary concerns about the multi-class structures centers on the profound governance challenges created by these structures. Simply put: directors may be less empowered to actively oversee management and make course corrections when they can be elected or fired by founders and/or their descendants. Empirical evidence gives empirical support for CII's concerns. A recent study by R. Masulis, C. Wong, F. Xie (Agency Problems at Dual Class Companies (2010), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1080361) found that managers with greater control rights than cash-flow rights may be more likely to pursue their private benefits at the expense of outside shareholders and that insiders with controlling voting rights are more likely to make decisions that destroy shareholder value.

4. However, governance concerns are not the only issue. A recent study by the Investor Responsibility Research Center Institute (http://irrcinstitute.org/pdf/FINAL-Controlled-Company-ISS-Report.pdf) found that companies with multi-class stock structures significantly underperform companies with non-controlling single-class structures over three-, five-, and 10-year time periods. During our meeting we discussed whether one or more industry sectors may have skewed the results. The answer is no. No single sector comprised enough of the study to slant the results. For example, while media was the largest sector, with 16 control corporations, the sector represented only 14 percent of the studied control companies. As a check the study results were recalibrated to exclude any industry sector with at least 5 controlled multiclass firms, and in each case, the average three-, five-, and 10-year total stock returns of the remaining multi-class companies lagged the non-controlling single-class structures.

5. The NYSE does not have a long history with multi-class common stock. In fact, for over half of the twentieth century, the New York Stock Exchange generally refused to let registered companies list shares of common stock that failed to grant voting rights or that granted unequal voting rights. This limitation was adopted in 1926, and former paragraph 313.00(C) of the New York Stock Exchange Listed Company Manual allowed the Exchange to refuse to list companies that issued a class or series of common stock that had "unusual voting provisions," for example, if one class of stock has the right to veto the actions of the common stock. The NYSE's current policy on multi-class stock was only approved in 1994, after a decade of debate.

6. The NYSE has an obligation to consider investor views along with issuer views on this important subject. Please let me know if I can assist with any contact information for investors interested in discussing this issue.

CII looks forward to working with you as your explore this important issue. Please do not hesitate to contact me if CII can be of assistance.

Sincerely,

Ann Yerger
Executive Director

Cc: John Carey, VP-Legal, NYSE Regulation
Courtney Raio, Managing Director, NYSE Euronext

John Carey
Vice President—Legal
NYSE Regulation
20 Broad Street
New York, NY 10005

Courtney Raio
Managing Director
NYSE Euronext
20 Broad Street
New York, NY 10005