

ROSENTHAL, MONHAIT & GODDESS, P. A.  
ATTORNEYS AT LAW  
SUITE 1401, 919 MARKET STREET  
P. O. BOX 1070  
WILMINGTON, DELAWARE 19899-1070

TELEPHONE (302) 656-4433  
FACSIMILE (302) 658-7567

NORMAN M. MONHAIT  
JEFFREY S. GODDESS  
CARMELLA P. KEENER  
EDWARD B. ROSENTHAL  
JESSICA ZELDIN  
P. BRADFORD DELEEuw  
—  
RETIRED PARTNER  
JOSEPH A. ROSENTHAL

March 26, 2013

Jeff Mahoney, Esquire  
General Counsel  
Council of Institutional Investors  
888 17<sup>th</sup> Street, N.W., Suite 500  
Washington, D.C. 20006-3310

Dear Mr. Mahoney:

I write on behalf of the Council of the Corporation Law Section of the Delaware State Bar Association (the “Council”) in response to your letter of October 25, 2012 (the “October 25<sup>th</sup> Letter”) in which the Council of Institutional Investors (“CII”) suggested that the Council propose amendments to the Delaware General Corporation Law (the “DGCL”) that would require majority voting in uncontested elections of directors.<sup>1</sup>

As you are aware, the DGCL does not currently mandate a standard for director elections, but provides plurality voting as the default rule in director elections. The lack of a mandatory standard is consistent with Delaware’s general policy of enabling corporations to select governance structures in a flexible manner. In addition, as we pointed out in the January 23 Letter, the DGCL was amended in 2006 to make sure that corporations could effectively opt in to majority voting.

The Council does not perceive a policy reason to change this current structure of director elections under Delaware law—an enabling approach that allows a corporation to choose the standard that best fits its situation. In particular, as described in the second paragraph of the January 23<sup>rd</sup> Letter, the Council does not believe that the empirical studies on the question whether a majority voting standard for the election of directors is beneficial or harmful to any individual corporation and its stockholders, or to aggregate stockholder wealth or economic efficiency, are compelling enough to dictate imposition of a voting regime and deny Delaware

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<sup>1</sup> Previously, on August 11, 2011, you had sent a letter (the “August 11 Letter”) on behalf of CII suggesting that the Council recommend establishing majority voting as the default standard in director elections. The Council responded to your letter on January 23, 2012 (the “January 23 Letter”), explaining its decision not to recommend a statutory amendment that would change the default rule.

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corporations the opportunity in this context for private ordering which is a hallmark of the DGCL.

In addition, as the last section of the January 23<sup>rd</sup> Letter explained, the majority voting concept is not readily malleable into a structure that functions effectively for all corporations. CII's suggestion of detailed statutory provisions to address holdover and transition issues would not be practical or tenable for all of the thousands of Delaware corporations, as different companies would have to address different issues, including those noted in the January 23<sup>rd</sup> Letter: advance notice bylaws, qualification provisions, proxy access provisions and any existing director classification. To borrow from the January 23<sup>rd</sup> Letter:

[Q]uestions...[such as] how to identify precisely when an election is contested, how to deal with transition issues, and how to make majority voting work with all of a corporation's governance provisions...do not lend themselves to resolution by a ...[single] standard, and the attempt to design one could create a trap for the unwary. Thus, we believe that it is important that a majority voting structure be properly tailored to the corporation's particularized situation and other governance provisions at the time of implementation.

We are not aware of any developments since the January 23 Letter that would support a departure from that conclusion. The Council therefore believes that it would be unwise to require corporations to use majority voting. Instead, the DGCL should continue to provide maximum flexibility, which has allowed hundreds of public companies to adopt majority voting regimes suited to their circumstances

The Council continues to believe that an enabling regime that empowers stockholders to express their preferences on governance provisions and structure mechanisms appropriate to circumstances provides the best alternative for Delaware corporations. We continue to welcome CII's input in identifying and remedying ambiguities or limitations of the DGCL.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Norman M. Monhait", written in a cursive style.

Norman M. Monhait