



Via Hand Delivery

July 23, 2014

The Honorable Scott Garrett  
Chairman  
Subcommittee on Capital Markets and Government Sponsored Enterprises  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, DC 20515

The Honorable Carolyn B. Maloney  
Ranking Member  
Subcommittee on Capital Markets and Government Sponsored Enterprises  
Committee on Financial Services  
B301-C Rayburn House Office Building  
Washington, DC 20515

Re: *July 24, 2014, Hearing entitled, "Oversight of the SEC's Division of Corporation Finance"*<sup>1</sup>

Dear Mr. Chairman and Ranking Member Maloney:

I am writing on behalf of the Council of Institutional Investors (Council), a nonprofit association of employee benefit plans, foundations and endowments with combined assets under management exceeding \$3 trillion. Our member funds include major long-term shareowners with a duty to protect the retirement savings of millions of American workers.<sup>2</sup>

We applaud the Subcommittee for holding the above referenced hearing. As the Subcommittee is well aware, Council members and many other market participants rely, in significant part, on the U.S. Securities and Exchange Commission (SEC or Commission) and its Division of Corporation Finance (Division) "to ensure that investors are provided with material information in order to make informed investment decisions, both when a company initially offers its securities to the public and on an ongoing basis as it continues to give information to the marketplace."<sup>3</sup> With that important responsibility in mind, we respectfully offer a brief summary of our views on the four issues that we understand the Subcommittee plans to examine at tomorrow's hearing.

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<sup>1</sup> Memorandum from FSC Majority Staff to Members of the Committee on Financial Services 1 (July 21, 2014), [http://financialservices.house.gov/uploadedfiles/072414\\_cm\\_memo.pdf](http://financialservices.house.gov/uploadedfiles/072414_cm_memo.pdf).

<sup>2</sup> For more information about the Council of Institutional Investors (Council) and our members, please visit the Council's website at [http://www.cii.org/about\\_us](http://www.cii.org/about_us).

<sup>3</sup> *About the Division*, Div. of Corp. Fin., U.S. Sec. Exch. Comm'n, [http://www.sec.gov/corpfin#.U8fhv\\_ldUYM](http://www.sec.gov/corpfin#.U8fhv_ldUYM) (last modified, Apr. 29, 2014).

## 1. Overview of Issuer Disclosure

The Council supports the Division's comprehensive review of the SEC's rules governing public company disclosure.<sup>4</sup> As the primary users of SEC required disclosures, long-term institutional investors generally agree that the overarching goal of the Division's disclosure effectiveness project should be to increase the "the quality and usefulness of registrants' disclosures to investors."<sup>5</sup> Thus, our continuing support for the project is contingent on the goal not being usurped by other potentially conflicting goals, including that of "reducing the volume of disclosures."<sup>6</sup> We look forward to providing the SEC with input on any recommendations that may result from this laudable project.

## 2. Rulemakings Mandated by Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank)

Four years ago, with the passage of Dodd-Frank, the U.S. Congress and the administration took a significant step forward in helping to restore trust in the U.S. financial markets and strengthen investor protections. We agree with the recent statement by Eugene Ludwig, founder and CEO of Promontory Financial Group and the former Comptroller of the Currency, that while imperfect, Dodd-Frank "has made the system safer and more stable."<sup>7</sup>

Council members continue to strongly support the effective implementation and active enforcement of the investor protections afforded in Dodd-Frank.<sup>8</sup> Despite the lack of independent and adequate funding,<sup>9</sup> the SEC and the Division should be commended for the progress that has been made to-date in implementing 42 of the 95 Dodd-Frank rulemaking requirements assigned to the Commission.<sup>10</sup> Far too many important implementing rules, however, have yet to be finalized or even proposed.<sup>11</sup>

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<sup>4</sup> See, e.g., Letter from Jeff Mahoney, General Counsel, Council, to Mr. Vikash Mohan, Program Analyst, Office of Financial Management, SEC 1 (Mar. 11, 2014) [hereinafter Vikash Letter], [http://www.cii.org/files/issues\\_and\\_advocacy/correspondence/2014/03\\_11\\_14\\_CII\\_letter\\_to\\_SEC\\_strategic\\_plan.pdf](http://www.cii.org/files/issues_and_advocacy/correspondence/2014/03_11_14_CII_letter_to_SEC_strategic_plan.pdf).

<sup>5</sup> U.S. Sec. & Exch. Comm'n, Strategic Plan, Planning for the Future, Fiscal Years 2014-2018, Draft for Comment 7 (2014), available at <http://www.sec.gov/about/sec-strategic-plan-2014-2018-draft.pdf>.

<sup>6</sup> Keith F. Higgins, Director, Div. of Corp. Fin., Disclosure Effectiveness: Remarks Before the American Bar Association Business Law Section Spring Meeting 2 (Apr. 11, 2014), <http://www.sec.gov/News/Speech/Detail/Speech/1370541479332#.U8miLvdXzc>.

<sup>7</sup> Melanie Waddell, Bipartisan Pol'y Ctr., 20 Ways to Improve Dodd-Frank Act, ThinkAdvisor 1 (July 15, 2014), <http://www.thinkadvisor.com/2014/07/15/20-best-ways-to-fix-dodd-frank-act>.

<sup>8</sup> See, e.g., Vikash Letter, *supra* note 4, at 2.

<sup>9</sup> Melanie Waddell, at 5 (recommendation of the Bipartisan Policy Center that the U.S. Securities and Exchange Commission ("SEC") be given "the resources necessary to implement financial reform and make them less susceptible to political pressures by establishing the independent funding sources . . . and removing them from the congressional appropriations process").

<sup>10</sup> Davis Polk & Wardwell LLP, Dodd-Frank Progress Report: Four Year Anniversary Report 4 (July 18, 2014), available at [file:///C:/Users/Jeff.Mahoney.US/Downloads/07.18.14.Dodd\\_Frank\\_Progress.Report%20\(2\).pdf](file:///C:/Users/Jeff.Mahoney.US/Downloads/07.18.14.Dodd_Frank_Progress.Report%20(2).pdf).

<sup>11</sup> *Id.* (Indicating that 18 rulemaking proposals assigned to the SEC have not yet been proposed).

We note that it has been well established that a key cause of the financial crisis was a failure of corporate governance.<sup>12</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>13</sup>

Many of the corporate governance provisions contained in Dodd-Frank are generally consistent with Council-membership-approved best practices.<sup>14</sup> Moreover, many of the provisions are generally consistent with the recommendations of the Investors' Working Group in its seminal report on the financial crisis, *U.S. Financial Regulatory Reform: The Investor's Perspective*,<sup>15</sup> which Council members endorsed.<sup>16</sup>

In light of the clear linkage between the financial crisis and need for corporate governance reforms, we believe the Commission and the Division should prioritize their future rulemakings. More specifically, future rulemakings should be focused on proposing and adopting rules that implement the outstanding corporate governance provisions of Dodd-Frank in a high quality and effective manner that meets investors' needs.

Of the remaining Dodd-Frank corporate governance provisions that have yet to be adopted or proposed, we are particularly concerned about the pending proposed rule on disclosure of pay for performance required by Section 953(a) of Dodd-Frank.<sup>17</sup> We note that the language and legislative history of Section 953(a) indicates that the purpose of the provision is to provide investors with more quantitative information about incentive pay that would assist the market in analyzing and understanding the relationship between executive compensation programs and company performance.<sup>18</sup> Consistent with the language and intent, we would support an implementing rule that provides

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<sup>12</sup> See, e.g., Fin. Crisis Inquiry Comm'n, *The Financial Crisis Inquiry Report xviii-xix* (Jan. 2011) ("We conclude dramatic failures of corporate governance . . . were a key cause of this crisis."), [http://fcic-static.law.stanford.edu/cdn\\_media/fcic-reports/fcic\\_final\\_report\\_full.pdf](http://fcic-static.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_full.pdf).

<sup>13</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 §§ 951-957, 971-972 (July 21, 2010), <http://www.gpo.gov/fdsys/pkg/PLAW-111publ203/html/PLAW-111publ203.htm>.

<sup>14</sup> Council of Institutional Investors, *Corporate Governance Policies* §§ 2.4, 2.5, 3.2, 3.7, 5.1, 5.2, 5.5 & 5.8, available at [http://www.cii.org/files/ciicorporategovernancepolicies/07\\_08\\_14\\_corp\\_gov\\_policies.pdf](http://www.cii.org/files/ciicorporategovernancepolicies/07_08_14_corp_gov_policies.pdf) (updated May 9, 2014).

<sup>15</sup> Investors' Working Group, *U.S. Financial Regulatory Reform: The Investor's Perspective* 22-23 (July 2009), available at [http://www.cii.org/files/issues\\_and\\_advocacy/dodd-frank\\_act/07\\_01\\_09\\_iwg\\_report.pdf](http://www.cii.org/files/issues_and_advocacy/dodd-frank_act/07_01_09_iwg_report.pdf).

<sup>16</sup> Following its issuance, the Investors' Working Group ("IWG") report was reviewed and subsequently endorsed by the Council's board and membership. For more information about the IWG, visit the Council's website at [http://www.cii.org/investors\\_working\\_group](http://www.cii.org/investors_working_group).

<sup>17</sup> See, e.g., Letter from Jeff Mahoney, General Counsel, Council, to Keith F. Higgins, Director, Div. of Corp. Fin. 2 (Aug. 16, 2013) [hereinafter August Letter], [http://www.cii.org/files/issues\\_and\\_advocacy/correspondence/2013/08\\_16\\_13\\_cii\\_letter\\_to\\_sec\\_pay\\_vs\\_performance.pdf](http://www.cii.org/files/issues_and_advocacy/correspondence/2013/08_16_13_cii_letter_to_sec_pay_vs_performance.pdf).

<sup>18</sup> See, e.g., S. Rep. No. 111-176, at 135 (Apr. 30, 2010), [www.banking.senate.gov/public/files/Committee\\_Report\\_S\\_Rept\\_111\\_176.pdf](http://www.banking.senate.gov/public/files/Committee_Report_S_Rept_111_176.pdf).

additional quantitative information illustrating the “relationship between executive compensation actually paid and the financial performance of the issuer . . . .”<sup>19</sup>

Our concern with the pending rulemaking is that it is our understanding that the Division may propose, at the request of some issuers, changes to the information currently required to be disclosed in the issuer’s Summary Compensation Table.<sup>20</sup> Such changes would not only be inconsistent with the language and intent of Section 953(a), but would be in direct conflict with the views of many investors who generally support and find useful the information presently required to be disclosed in the Summary Compensation Table.<sup>21</sup>

More broadly, we are also concerned that delays in the completion of the Commission’s implementation of Dodd-Frank are deferring other necessary post-Dodd-Frank rulemakings. For example, over the past year the Council has requested that the Commission consider pursuing rulemaking on the following three proxy-related issues of great interest to Council members: preliminary proxy information, universal proxy cards and director compensation arrangements.<sup>22</sup> Despite our repeated requests, the Commission has failed to propose rulemaking on any of the three issues, indicating that further consideration of our requests is dependent, at least in part, upon completing “its statutorily-mandated rulemakings.”<sup>23</sup>

### 3. Rulemakings Mandated by Jumpstart Our Business Startups Act (JOBS Act)

While it is presently unclear to us whether the JOBS Act will ultimately benefit long-term investors and the U.S. capital markets, we continue to support the Commission’s efforts to complete the implementation of the JOBS Act’s rules and regulations.<sup>24</sup> As indicated, we are hopeful that completion of the implementation of Dodd-Frank and the JOBS Act will free-up the Commission and the Division to pursue other rulemakings that are of high-priority to Council members.

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<sup>19</sup> Pub. L. No. 111-203 § 953(a).

<sup>20</sup> See, e.g., August Letter, *supra* note 17, at 2-3.

<sup>21</sup> *Id.*

<sup>22</sup> See, e.g., Letter from Jeff Mahoney, General Counsel, Council, to Keith F. Higgins, Director, Div. of Corp. Fin. 1-5 (May 22, 2014), [http://www.cii.org/files/issues\\_and\\_advocacy/correspondence/2014/05\\_22\\_14\\_letter\\_to\\_SEC.pdf](http://www.cii.org/files/issues_and_advocacy/correspondence/2014/05_22_14_letter_to_SEC.pdf).

<sup>23</sup> See Letter from Keith F. Higgins, Director, Div. of Corp. Fin., to Jeff Mahoney, General Counsel, Council 2 (June 25, 2014), [http://www.cii.org/files/issues\\_and\\_advocacy/correspondence/2014/06\\_25\\_14\\_SEC\\_response.PDF](http://www.cii.org/files/issues_and_advocacy/correspondence/2014/06_25_14_SEC_response.PDF).

<sup>24</sup> See, e.g., Vikash Letter, *supra* note 4, at 7.

#### 4. Review of Proxy Advisory Industry

The Council is generally supportive of the SEC staff's recently issued guidance on the proxy advisory industry (Guidance).<sup>25</sup> We note that in connection with the Subcommittee's June 5, 2013, hearing on issues relating to the industry the Council submitted a statement that included the following recommendation:

We do not believe that the SEC's rules, or interpretations thereof, require investment advisers to vote all proxies. We, however, recognize that there may be confusion regarding this issue. We, therefore, believe SEC Staff interpretative guidance would be helpful.<sup>26</sup>

Consistent with our recommendation, the Guidance clarifies that investment advisers are not required to vote every proxy.<sup>27</sup> The Guidance also provides other useful clarifications that we believe are generally consistent with existing requirements under the federal proxy rules and best practices in the industry.<sup>28</sup>

Finally, we believe that the Guidance is generally sufficient to address legitimate issues that have been raised about the proxy advisory industry. Thus, our view is that the Commission and Division should not allocate further limited resources to additional industry guidance or rulemaking at this time, particularly in light of the many other issues, including those described in this letter, that are of far greater importance to investors and the U.S. capital markets.

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<sup>25</sup> Sec. & Exch. Comm'n, Proxy Voting: Proxy Voting Responsibilities of Investment Advisers and Availability of Exemptions from the Proxy Rules for Proxy Advisory Firms, Staff Legal Bulletin No. 20, at 1-7 (June 30, 2014), <http://www.sec.gov/interps/legal/cfslb20.htm>.

<sup>26</sup> *Examining the Market Power and Impact of Proxy Advisory Firms: Hearing Before the H. Subcomm. on Cap. Markets and GSEs of the Comm. on Fin. Servs.*, 113<sup>th</sup> Cong. 4 (June 5, 2013) (statement of Ann Yerger, Executive Director, Council), [http://www.cii.org/files/publications/misc/06\\_05\\_13\\_cii\\_proxy\\_advisor\\_hearing\\_submission\\_ann\\_yerger.pdf](http://www.cii.org/files/publications/misc/06_05_13_cii_proxy_advisor_hearing_submission_ann_yerger.pdf).

<sup>27</sup> See Proxy Voting at 2.

<sup>28</sup> *Id.* at 1-7.

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We appreciate the opportunity to provide input to the Subcommittee in advance of your hearing. Should you have any questions or require any additional information about the Council's views on this, or any other, matter please feel free to contact me at 202.261.7081 or [jeff@cii.org](mailto:jeff@cii.org).

Sincerely,

A handwritten signature in cursive script that reads "Jeff Mahoney".

Jeff Mahoney  
General Counsel