



ICGN

International Corporate Governance Network

By email: rule-comments@sec.gov

Ms Elizabeth Murphy
Secretary
Securities and Exchange Commission
100 F Street NE
Washington DC 20549
USA

23 May 2011

Dear Ms. Murphy,

Re: Wachtell, Lipton, Rosen & Katz March 7th 2011 'Petition for Rulemaking Under Section 13 of the Securities Exchange Act of 1934'

We write in respect of the letter sent to you by the law firm Wachtell, Lipton, Rosen & Katz on March 7th calling for a modernization of the Section 13 beneficial ownership reporting rules. We agree with Wachtell Lipton that there is a need for modernization of the system and would encourage the SEC not to restrict changes to those proposed by the firm, but also to consider other ways in which there can be greater transparency of ownership of US companies, and greater clarity over the exercise of voting and other ownership rights.

By way of background, we are writing on behalf of the International Corporate Governance Network (ICGN). The ICGN is a global membership organisation of institutional and private investors, corporations, and advisors from 47 countries. Our investor members are responsible for global assets of US\$12 trillion. The mission of the ICGN is to contribute meaningfully to the continuous improvement of corporate governance best practices through the exchange of ideas and information across borders. Information about the ICGN, its members, and its activities is available on our website: www.icgn.org.

We generally support the proposal made by Wachtell Lipton that there be a tightening of the disclosure requirements under Section 13. We agree that market certainty and efficiency are hampered by the current delay permitted before major shareholdings must be disclosed – a timeframe which seems to reflect a former era of investment. We share the concerns noted by Wachtell Lipton regarding apparent abuses of this delay to build very significant positions before they are disclosed to the market. We do not believe that this delay in disclosure assists the process of price discovery and are concerned that it advantages short-term traders at the expense of long-term shareholders. We note that many other major markets have disclosure timetables stricter than that in the US, and that this does not seem to have chilled shareholder activism in those markets. Having noted our support for the reduction of the 10-day window to a single day, however, we do not believe that the cooling-off period which Wachtell Lipton proposes following an announcement of a 5% shareholding is warranted: instead we believe that a shareholder should be able to continue to make purchases immediately following the public disclosure of a substantial position.

We would also welcome a Commission move to include derivatives and other relevant instruments within the Section 13 disclosure requirements, and again note that a number of other markets have already taken similar steps in this regard. Often this has been to avoid the disclosure rules being circumvented; a number of

countries require disclosure of both net and gross positions so that the use of derivatives by major shareholders is transparent and the disclosures are not misleading.

We believe, however, that the SEC's consideration of clarity over the ownership of US company shares should not stop with the Wachtell Lipton proposals. We strongly regret the unedifying and increasing spectacle of US companies seeking to no-action shareholder proposals on the basis of technical deficiencies with regard to the proponent's declared shareholding. We believe that this arises generally not because shareholders are trying to stretch the bounds of what is permitted but because of a lack of transparency and clarity over share ownership in the US. We therefore believe that there needs to be greater consideration given in the US system of transparency of shareholding through to the underlying beneficial owner of the shares such that these and other technical difficulties become a thing of the past. These technical issues are no less a feature of a former investment era than the delay in the Section 13 disclosure requirement.

This additional clarity of ownership would facilitate communication between companies and their underlying owners, something which we believe is vital to the good functioning of capital markets. We also believe that it would provide a firmer foundation for the reform of the US proxy voting system which the SEC is considering. The ICGN would strongly welcome this reform, and stands ready to discuss ways forward with the Commission to effect the necessary changes.

We would be delighted to discuss these issues or provide additional information. Please do not hesitate to contact Carl Rosén, the ICGN's Executive Director, by email at Carl.rosen@icgn.org or by telephone on +44 (0) 207 612 7098.

Yours sincerely



Paul Lee
Chair, ICGN Shareholder Responsibilities Committee