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To Brent J Fields, Secretary, U.S. Securities and Exchange Commission

By email to rule-comments@sec.gov

20 April 2015

S7-01-15 DISCLOSURE OF HEDGING BY EMPLOYEES, OFFICERS AND DIRECTORS

Dear Mr Fields,

By way of background, we represent more than 40 pension funds and other long-term investors from around the world to engage with companies on matters that affect their long term value. We also engage with regulators and others on public policy matters that affect the environment in which our clients make their investments and own companies' equity and debt. In aggregate we represent more than $200 billion assets under advice.

We believe that the long-term ownership by directors, officers and employees of the shares of the companies of which they are stewards helps to align their interests to the owners as a group.

We therefore encourage long-term ownership of shares by directors, officers and employees. The ability to hedge their equity (including shares yet to vest, options or any other awards including cash based on the equity of the company) serves to subvert this alignment.

We would therefore prefer that the SEC went further than its proposed disclosure rules and implemented an outright ban on hedging equity (as defined in the third paragraph above). This ban should extend to at least all directors and senior management and for all equity arising out of equity awards (as defined above) made by the company to other employees. We would be prepared to see a carve out for junior employees to hedge shares that they had purchased on the open market. In regulated industries where variable pay comprises a high proportion of total compensation any hedging should be closely scrutinised by the relevant regulators, working on the presumption that it increases risk for both the companies' shareholders and clients.

In the absence of such a ban, we believe disclosure of all hedging of equity (as defined above) is a minimum requirement for any semblance of good governance. This disclosure should follow our views regarding a ban as described above. We accept for reasons of anonymity that some disclosure would be aggregated.

We also believe that all hedging of equity (as defined above) should be approved in advance. Hedging by directors and senior management should be approved in advance by the independent directors or by a committee comprised solely of independent directors, with those with a conflict recusing themselves. We expect that in practice there will be minimal

approvals for hedging at this level of any organisation, with many boards agreeing to ban all hedging. The SEC should enact disclosure requirements regarding how decisions and approvals are made on hedging wherever it is permitted so investors can understand the governance of hedging and, if need be, seek to improve it.

Above all we are concerned that management and others could insulate themselves from downside risk without making outside investors aware that this is happening. This could lead to increased risk in strategic decision making and execution. We believe that hedging of equity by directors is in conflict with their fiduciary duties and that this conflict is even more acute unless it is disclosed. At least disclosure helps investors to make an informed investment decision taking the conflict into account.

While the consultation does not address the associated issue of pledging, we believe that any pledging by directors, officers and named executive officers must be disclosed. While we do not like pledging as it serves to weaken the alignment of equity ownership, we can understand why it may be necessary for senior people to pledge temporarily some of their shares to help them manage their personal finances from time to time. However, extensive pledging is likely to be very problematic particularly if it is not temporary in nature. We also acknowledge that it is very difficult to write rules enabling some, limited hedging. We therefore rely on boards of directors to set the necessary cultural limits on hedging, if necessary having robust conversations with management.

We therefore believe that all pledging by directors or senior management should be approved in advance by the independent directors or by a committee comprised solely of independent directors, with those with a conflict recusing themselves. The aggregate pledged position of the most senior management, comprising as a minimum the executive committee and their direct reports should be disclosed. With appropriate disclosure investors will be able to understand the amounts pledged at senior level in the organisation and the governance of pledging. We accept that some of this information may have to be aggregated for reasons of anonymity.

While we accept that the SEC is seeking some more detailed comments on its proposals, we believe that our high level statement of our position as a representative of a number of large asset owners is more useful to both the SEC and our clients than a line by line analysis of the details of the proposals and drafting suggestions.

Should you wish to discuss our views in any further detail on this, or any other matter, please contact [redacted].

Yours sincerely,

Tim Goodman
Head of US engagement