Business Roundtable

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January 19, 2010

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
150 F Street, NE
Washington, DC 20549-1090

Re: *File No. S7-10-09*
Facilitating Shareholder Director Nominations

Dear Ms. Murphy:

This letter is submitted on behalf of Business Roundtable, an association of chief executive officers of leading U.S. companies with more than $6 trillion in annual revenues and more than 12 million employees. We are submitting this letter in response to the recent announcement of the Securities and Exchange Commission (the "Commission") that it has re-opened the comment period for its June 2009 proposal regarding shareholder access to company proxy materials for director nominations (also known as "proxy access"). As noted in the Commission's December 14, 2009 release, the Commission has requested comment on additional data and related analyses that were submitted on or after the close of the original comment period. We appreciate the opportunity to provide our views on these additional data and analyses.

1. <u>The NERA Report</u>

NERA Economic Consulting's *Report on Effects of Proposed SEC Rule 14a-11 on Efficiency, Competitiveness and Capital Formation, in Support of Comments by Business Roundtable* (the "NERA Report"), addresses the costs of proposed Rule 14a-11 and certain related proposed rule amendments (the "Proposed Election Contest Rules") in terms of efficiency, competitiveness and capital formation. The NERA Report, submitted in conjunction with our August 17, 2009 comment letter, concludes that the Proposed Election Contest Rules would impose substantial additional costs on public companies, impair their efficiency and competitiveness, and further undermine the attractiveness of U.S. equity markets, while providing only modest savings for shareholders engaging in proxy contests.

In particular, the NERA Report points out that by reducing the cost to shareholders of submitting director nominations, the Proposed Election Contest Rules inevitably will increase the number of director nominations by shareholders. The low minimum cost of submitting a nomination will encourage the use of the Proposed Election Contest Rules by shareholders who are not interested in ensuring that their nominee succeeds, but who only wish to use a nomination as leverage in obtaining concessions, including on unrelated matters.[1] A company—and a proponent's fellow shareholders—will bear the cost of such a shareholder's nomination, as management and the board will be obliged by their fiduciary duties to expend resources, both time and money, in campaigning against a nominee who does not represent the interests of all shareholders. Indeed, as the NERA Report notes, a company's management and board likely will be compelled to expend even more resources than they might otherwise spend on a proxy contest to ensure that a nominee representing a narrow point of view or special interests is not elected.

Although the Proposed Election Contest Rules decrease the cost of a director *nomination* for a shareholder with no interest in ensuring the election of its nominee, the Proposed Election Contest Rules do little to address the cost of a director election contest for a shareholder actively seeking the election of its nominee. The Proposed Election Contest Rules will not reduce the costs incurred by proponents related to legal counsel, proxy solicitors, public relations advisors and advertising. In fact, the Commission itself acknowledges that the Proposed Election Contest Rules would result in only an average of

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[1] As Professor Joseph A. Grundfest explains, "Labor unions and public pension funds rationally value proxy access for reasons that have nothing to do with the prospect of actually electing directors to corporate boards." Joseph A. Grundfest, *The SEC's Proposed Proxy Access Rules: Politics, Economics, and the Law* 4 (Rock Ctr. for Corporate Governance at Stanford Univ. Working Paper No. 64, 2009), *available at* http://ssrn.com/abstract=1491670. Rather, such special-interest groups will use the "megaphone externalities" generated by proxy access to draw attention to their causes. Further, the "electoral leverage" produced by proxy access will provide special-interest nominees and their supporters with the ability to obtain concessions in exchange for withdrawing a nomination. *See id.* at 17. As stated in *Labor's Role in the Shareholder Revolution*, unions submit shareholder proposals to "gain access to 'behind the scenes' meetings with managers . . . . During these meetings, it is commonly understood within the institutional investor community that unions may discuss labor issues as well as corporate governance matters . . . . If these negotiations proceed favorably, the notion is that the union will withdraw its shareholder proposals." Marleen O'Connor, *Labor's Role in the Shareholder Revolution*, *in* WORKING CAPITAL: THE POWER OF LABOR'S PENSIONS 71 (2001). Yet, researchers have found that "a long-standing labor voice in corporate governance is associated with significantly depressed shareholder value, sales growth, and job creation." Olubunmi Faleye, *et al.*, *When Labor Has a Voice in Corporate Governance*, 41 J. FIN. & QUANTITATIVE ANALYSIS 489, 509 (2006).

$18,000 in estimated savings in printing and postage for a nominating shareholder—less than 5% of the total cost of a traditional proxy contest, according to the Commission.[2] Thus, as the NERA study concludes, the benefits of the Proposed Election Contest Rules do not outweigh the significant costs they will impose.

2. <u>The Cross-Country Study</u>

In its June 2009 proposing release, the Commission indentifies the recent economic crisis and the need to increase investor confidence as the principal justifications for the Proposed Election Contest Rules. As we stated in our August 17 comment letter, the Commission's assertion that the Proposed Election Contest Rules are a necessary response to the economic crisis has no basis in fact. The economic crisis stemmed from a variety of complex market and regulatory circumstances, about which even experts disagree. In fact, the Proposed Election Contest Rules could exacerbate factors that may have contributed to the crisis, such as the emphasis on short-term gains at the expense of long-term, sustainable growth.

The recent study by Andrea Beltratti and René M. Stulz, *Why Did Some Banks Perform Better During the Credit Crisis? A Cross-Country Study of the Impact of Governance and Regulation* (the "Cross-Country Study"), corroborates the analysis in our August 17 comment letter. In this study, which we submitted to the Commission on September 11, 2009, the authors analyze whether individual bank performance during the credit crisis was related to various factors, including bank-level governance, country-level governance, country-level regulation, and bank balance sheet and profitability characteristics before the crisis. Among other things, the authors found "no consistent evidence that better governance led to better performance during the crisis." In fact, the authors observed "strong evidence that banks with more shareholder-friendly boards performed worse" during the crisis. The authors explain that this result "is consistent with the view that banks that were pushed by their boards to maximize shareholder wealth before the crisis took risks that were understood to create shareholder wealth, but were costly ex post because of outcomes that were not expected when the risks were taken." In other words, boards that were more responsive to shareholders encouraged banks to take risks that maximized short-term shareholder wealth at the expense of long-term value creation. We also note the recent publication of a study that reaches a conclusion similar to that of the Cross-Country Study. In *Did Corporate Governance "Fail" During the 2008 Stock Market Meltdown? The Case of the S&P 500*, published in the November 2009 volume of *The Business Lawyer* (the "S&P 500 Study," attached), Brian R. Cheffins examines the corporate governance practices of 37 companies that were removed from the S&P 500 index during

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[2] Facilitating Shareholder Director Nominations, SEC Release No. 33-9046, 34-60089, 74 Fed. Reg. 29,024, 29,073 (June 18, 2009).

the stock market turmoil of 2008. After reviewing several indicators of corporate governance among the 37 companies, the author concludes that corporate governance functioned "satisfactorily" at these companies and, accordingly, the economic crisis is not sufficient to justify sweeping corporate governance reforms. Both the S&P 500 Study and the Cross-Country Study thus undermine the purported link between proxy access and the economic crisis advanced by the Commission to justify the Proposed Election Contest Rules.

3. <u>The Form 13F Memorandum</u>

On November 24, 2009, the Commission's newly formed Division of Risk, Strategy, and Financial Innovation submitted a memorandum regarding share ownership and holding period patterns in Form 13F data (the "Form 13F Memorandum"). The Form 13F Memorandum updates an earlier analysis performed by the Office of Economic Analysis, which is now part of the Division of Risk, Strategy, and Financial Innovation, in connection with the Commission's 2003 proxy access rule proposal. Using data derived solely from Form 13F filings for the quarter ended December 31, 2008, the memorandum provides, among other things, an analysis of the percentage of public companies with shareholders satisfying various hypothetical proxy access holding periods and ownership thresholds.

At the outset, we note that the Form 13F Memorandum is inherently limited in a number of respects, as its authors acknowledge. Most significantly, the Form 13F data is under inclusive in several ways. For example, not all institutional investment managers are required to report their holdings on Form 13F and certain holdings of institutional investment managers are not reportable, which would result in the exclusion of data relevant to proxy access eligibility. In addition, the Form 13F data do not reflect the most likely scenario, the potential formation of investor groups aggregating share ownership to qualify for proxy access.[3] We nonetheless believe that the data in the Form 13F Memorandum highlight our concern that the proposed eligibility thresholds fail to meet the Commission's stated objective of limiting proxy access to "holders of a significant, long-term

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[3] Evidence suggests such shareholder coordination is likely. In recent years, shareholders have coordinated their efforts in highly effective "vote no" campaigns, in which shareholder activists encourage other shareholders to withhold votes from, or vote against, certain directors, with such aims as pressuring a company to make corporate governance changes or forcing a director to step down. *See* Diane Del Guercio, *et al.*, *Do Boards Pay Attention When Institutional Investor Activists "Just Vote No"?*, JOURNAL OF FINANCIAL ECONOMICS, Oct. 2008. Further, the availability of the Internet and social media has facilitated the coordination of shareholder efforts. In 2007, a shareholder of Yahoo! was able to leverage an Internet blog and a number of videos posted on YouTube into a coalition of 100 shareholders that gathered a 33% "against" vote for one of the company's directors. *See* Christine Dunn, *The Investor Activist Who Took Down Yahoo*, COMPLIANCE WEEK, July 17, 2007, *available at* https://www.complianceweek.com/article/3512/the-investor-activist-who-took-down-yahoo.

interest" in a company.[4] Under the Proposed Election Contest Rules, any shareholder or group of shareholders beneficially owning, individually or in the aggregate, the requisite percentage of a company's voting securities (1%, 3% or 5%, tiered according to the size of the company) for at least one year would be permitted to nominate one or more director candidates in company proxy materials. According to the Form 13F Memorandum, the Proposed Election Contest Rules would result in broad shareholder eligibility for proxy access: 74% of all public companies, and 94% of all public companies with a market capitalization of greater than $50 billion, would have one or more shareholders eligible for proxy access if the Commission were to require a one-year holding period and a 1% ownership threshold.[5]

In addition, 64% of all public companies, and 91% of all public companies with a market capitalization of greater than $50 billion, would have one or more shareholders eligible for proxy access if the Commission were to require a one-year holding period and a 3% ownership threshold. However, as the NERA Study and our August 17 comment letter explain, widespread proxy access will result in substantial costs, which will be borne by companies and their shareholders. The holders of just 1% or even 3% of a company's voting shares lack a sufficient stake in the company to warrant imposing the significant costs of proxy access on all shareholders.

4. The Corporate Library Paper

The Corporate Library's paper, *The Limits of Private Ordering: Restrictions on Shareholders' Ability to Initiate Governance Change and Distortions of the Shareholder Voting Process* (submitted on November 18, 2009 by the Shareowner Education Network and the Council of Institutional Investors) ("The Corporate Library Paper"), seeks to challenge the argument that the Commission should permit shareholders at individual companies to decide whether

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[4] 74 Fed. Reg. at 29,073.

[5] To support the proposed ownership thresholds in the June 2009 proposing release, the Commission cites Form 13F data showing the percentage of companies that have at least one shareholder meeting the relevant threshold. As we stated in our August 17 comment letter, the Commission provides no basis for the proposition that every company should have at least one shareholder eligible in its own right to nominate a director under the Proposed Election Contest Rules. Given that shareholders have divergent interests, one shareholder, who may represent a narrow point of view or special interests, should not be permitted to impose the cost of a director election contest on all shareholders. *See* Ashwini K. Agrawal, *Corporate Governance Objectives of Labor Union Shareholders: Evidence from Proxy Voting* 30 (NYU Working Paper No. FIN-08-006, 2009), *available at* http://ssrn.com/abstract=1354494 (explaining that shareholders sometimes have divergent objectives and that, for example, "some labor union shareholders have board of director voting patterns that partly reflect union worker interests rather than the objectives of maximizing equity value alone"). We believe the Commission should focus on shareholders with a significant, long-term interest in a company, rather than trying to ensure that each company has a shareholder eligible to nominate a director.

proxy access is desirable and to determine the form, if any, of proxy access at their companies. The Corporate Library Paper concludes that private ordering, also known as "shareholder choice," with respect to proxy access would be inadequate because, among other things, some companies maintain multiple classes of stock with disparate voting rights, place limitations on shareholders' ability to amend company bylaws and have supermajority voting provisions applicable to bylaw amendments. We believe The Corporate Library Paper misstates its argument, as supermajority voting provisions do not block shareholder proposals to amend bylaws.

While the Shareowner Education Network and the Council of Institutional Investors assert in their cover letter that The Corporate Library Paper shows that "permitting company-by-company decisions on access would effectively lock out shareholders at about 40 percent of top U.S. companies," this description of the data is misleading and inaccurate. According to the data presented in The Corporate Library Paper, 35% to 39% of companies in three stock indices employ a supermajority voting requirement for shareholder bylaw amendments. In addition, 3% to 4% of these companies prohibit shareholder bylaw amendments. The Corporate Library Paper aggregates these percentages to reach the conclusion that 40% of companies in three major stock indices either (a) have supermajority voting requirements for shareholder bylaw amendments or (b) prohibit shareholder bylaw amendments. Supermajority voting requirements cannot, however, be equated with the prohibition of shareholder bylaw amendments. Shareholders at companies with supermajority voting requirements are by no means "lock[ed] out" from amending the bylaws to opt in or out of a proxy access regime. Proposals presented to shareholders regularly garner supermajority support.[6] According to The Corporate Library Paper's own statistics, only a very small percentage, 3% to 4% of companies in three stock indices, completely prohibit shareholder bylaw amendments. And, of course, the Commission could limit shareholder choice to companies that permit shareholder bylaw amendments. Further, The Corporate Library Paper ignores the fact that supermajority voting requirements to amend company bylaws may serve a legitimate purpose. A company and its shareholders may have determined that certain significant decisions, such as the amendment of the company's governing documents, require the consensus of a supermajority of shareholders.[7] Moreover, to the extent that shareholders believe that supermajority voting requirements are problematic,

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[6] In this regard, many proposals that require supermajority votes are passed each year. Specifically, at Russell 3000 companies in 2009, 20 out of 22 (90.9%) company proposals to reduce supermajority voting requirements that required a supermajority vote for approval were approved. In addition, at Russell 3000 companies in 2009, 20 out of 26 (76.9%) company proposals regarding board declassification that required a supermajority vote for approval were approved. Data derived from the RiskMetrics Group Voting Analytics database.

[7] Indeed, our country's governing document—the U.S. Constitution—recognizes the importance of a supermajority vote in certain instances, including amendment of the document itself.

they remain free to advocate against supermajority voting requirements.[8] Indeed, in recent years, a number of public companies have eliminated supermajority voting requirements for shareholder bylaw amendments, in response to shareholder proposals or otherwise. At Russell 3000 companies in 2009, there were 33 company proposals to reduce supermajority voting requirements, and 31, or 93.9%, were approved. In addition, there were 13 shareholder proposals to reduce supermajority voting requirements, and 11, or 84.6%, were approved. At S&P 500 companies, 100% of the 18 company proposals to reduce supermajority voting requirements were approved, and 10 out of 12, or 83.3%, of such shareholder proposals were approved.[9] More generally, we note that shareholders are far from powerless with respect to effecting change in corporate governance. As we explained in our August 17 comment letter, even precatory shareholder proposals frequently prompt company boards and management to implement corporate governance reforms. In recent years for example, precatory shareholder proposals urging companies to adopt majority voting standards have resulted in the voluntary adoption of majority voting at numerous companies.[10]

The crux of The Corporate Library Paper is that, at certain companies, a simple majority of shareholders may be impeded in adopting proxy access bylaws due to purported structural obstacles, such as supermajority voting requirements and multiple classes of stock with disparate voting rights.[11] As discussed above, The Corporate Library Paper is inaccurate and misleading in various respects and, ultimately, merely provides a policy argument in favor of simple majority voting provisions. It does not provide a basis for asserting that

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8 *See* Stanley Keller, Robert Todd Lang and Charles M. Nathan, *Shareholder Choice in a World of Proxy Access* (Dec. 31, 2009), *available at* http://blogs.law.harvard.edu/corpgov/2009/12/31/shareholder-choice-in-a-world-of-proxy-access/.

9 Data derived from the RiskMetrics Group Voting Analytics database.

10 *See* RiskMetrics Group, 2008 Background Report: Election of Directors, Board Independence, and Related Issues, at 2, 8 (Apr. 2008) (reporting the voluntary adoption of majority voting by a number of companies seeking to pre-empt shareholder proposals and noting that many shareholder proposals regarding majority voting were withdrawn when companies agreed to adopt majority voting voluntarily).

11 The Corporate Library Paper also asserts that broker voting on management proposals to opt out of proxy access would strengthen support for such proposals, as broker votes are typically cast in accordance with management's recommendation. However, in recent years, a number of large brokerages have adopted "proportional voting," whereby they vote uninstructed shares in the same proportion as votes from clients who provide instructions. According to Broadridge Financial Services, Inc., ten brokerages, including Charles Schwab & Co., Edward Jones, Goldman Sachs, Merrill Lynch, Morgan Stanley, Ridge Clearing and Outsourcing Services, Ameritrade, UBS Financial Services, National Financial Services and First Southwest Company, have authorized the use of proportional voting. *See* Broadridge Financial Services, Inc., 2009 Corporate Issuer Services Guide, at 29.

large numbers of shareholders do not have the ability to amend company bylaws with respect to proxy access.

The Corporate Library Paper attempts to downplay the significance of the recent amendments to Delaware law addressing proxy access and proxy reimbursement by noting that 57.1% to 60.8% of companies in three stock indices are incorporated in Delaware; for the remainder of companies not incorporated in Delaware, The Corporate Library Paper asserts, there is no assurance that a shareholder proposal regarding a proxy access bylaw amendment would be valid under applicable state law. However, Delaware amended its laws to "clarif[y]" that companies may adopt proxy access bylaws.[12] Accordingly, it is incorrect to assume that proxy access bylaws would be invalid under other state laws. Further, the American Bar Association's Committee on Corporate Laws recently adopted amendments to the Model Business Corporation Act (the "MBCA") similar to those enacted in Delaware.[13] To be sure, individual state legislatures will need to consider whether to voluntarily adopt the MCBA proxy access and proxy reimbursement amendments. State legislatures that believe that the proposed MBCA amendments will provide benefits to companies and that their shareholders will take action to adopt these amendments. Indeed, past experience suggests that state legislatures will likely take action to adopt similar amendments to their corporate laws. In 2006, the Committee on Corporate Laws amended the Model Business Corporation Act to facilitate the adoption of majority voting standards. Subsequently, a number of states adopted legislation to clarify or ease the adoption of some form of majority voting in director elections.[14]

Rather than disenfranchising shareholders through a mandatory federal proxy access regime, the Commission should give other state legislatures the opportunity to consider the adoption of enabling statutes that permit shareholder choice regarding proxy access and

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[12] *See* Synopsis, H.B. 19, 145th Gen. Assem. (Del. 2009) (explaining that "[n]ew Section 112 *clarifies* that the bylaws may require that if the corporation solicits proxies with respect to an election of directors, the corporation may be required to include in its proxy materials one or more nominees submitted by stockholders in addition to individuals nominated by the board of directors") (emphasis added).

[13] *See* Press Release, American Bar Association, Corporate Laws Committee Adopts New Model Business Corporation Act Amendments to Provide for Proxy Access and Expense Reimbursement (Dec. 17, 2009), *available at* http://www.abanet.org/abanet/media/release/news_release.cfm?releaseid=848. The MCBA has been adopted in whole or in part by 30 states. *See id.*

[14] *See, e.g.*, CONN. GEN. STAT. § 33-600 *et seq*. (2010); FLA. STAT. ANN. § 607.0728 (West 2010); UTAH CODE ANN. § 16-10a-1023 (West 2010); VA. CODE ANN. § 13.1-669 (West 2010); WASH. REV. CODE ANN. § 23B.10.205 (West 2010). Other states that do not follow the MCBA also have similarly amended their corporate laws. *See, e.g.*, CAL. CORP. CODE § 708.5 (West 2010); DEL. CODE ANN. tit. 8, § 216 (2010); N.J. STAT. ANN. § 14A:5-24 (West 2010); N.Y. BUS. CORP. LAW § 614 (McKinney 2010); OHIO REV. CODE ANN. § 1701.55 (West 2010).

proxy reimbursement. We believe that revising Rule 14a-8 to permit the adoption, through the shareholder proposal process, of proxy access or proxy reimbursement bylaws, would enable shareholders to implement proxy access if they choose to do so, and give them and their companies' boards of directors the flexibility to make choices about how to do it. Indeed, they may conclude that providing the right to reimbursement of expenses incurred in connection with proxy contests is a better alternative to proxy access.[15] Shareholders who represent a large portion of a company's ownership base and oppose proxy access should not be ignored in favor of shareholders who want to propose nominees to encourage short-term value maximization or other special interests. Providing shareholder choice through a revised Rule 14a-8 would uphold the long and highly successful tradition of private ordering within the framework established by state corporate law.

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We understand that the Commission has extended the comment period in order to seek comment on additional data and related analyses, and our comments have been directed to those matters. However, given the importance with which we view proxy access and its potential impact on the economic recovery, we feel compelled to address some of the significant adverse consequences of proxy access that are discussed in our August 17 comment letter. Most significantly, proxy access would exacerbate the very short-termism that many believe was a contributing cause to the economic crisis. In this regard, encouraging director election contests will increase the pressure on corporations to produce large, short-term returns at the expense of long-term value creation. It also will reduce the pool of talented individuals willing to serve as directors in a highly charged confrontational atmosphere—not only during an election contest but also on the divisive boards likely to result. Moreover, the proposed rules ignore the importance of board composition, which is highlighted by the Commission's new rules on disclosure of director qualifications and experience. Further, mandatory federal proxy access disregards the 200 years of state corporate law that, through its enabling nature, has permitted the growth and prosperity of corporations of all sizes. And, finally, the proposed rules would place enormous additional pressure on the antiquated shareholder communication and proxy voting systems that the Commission only has recently begun to study.

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15 *See, e.g.*, Charles M. Elson, *Shareholder Election Reform and Delaware Corporate Regulation*, 26 DELAWARE LAWYER 18, 18 (2008) (arguing that "[t]he simplest solution . . . is to provide some sort of reimbursement of reasonable expenses to challengers in non-control directorial election challenges"). In October 2009, HealthSouth Corporation became one of the first public companies to take advantage of the new Delaware law provisions when its board of directors adopted a proxy access bylaw amendment. *See* Press Release, HealthSouth Corporation, HealthSouth Commits to a Reimbursement Policy for Shareholder Proxy Nominations (Oct. 26, 2009).

For all these reasons, and as we indicated in much more detail in our August 17 comment letter, we believe that the Commission should not adopt Rule 14a-11, but instead should adopt amendments to Rule 14a-8 to permit shareholder proposals relating to proxy access. If the Commission nevertheless determines to adopt a proxy access rule, it should consider the revisions suggested in our August 17 comment letter. Most significantly, it should provide for shareholder choice—both in terms of the existence of proxy access and with respect to the details of any proxy access regime.

We appreciate the opportunity to present our views on this subject. Please do not hesitate to contact Larry Burton, Executive Director of Business Roundtable, at (202) 872-1260, if we can provide further information.

Sincerely,

Alexander M. Cutler

Alexander M. Cutler
Chairman and Chief Executive Officer of Eaton Corporation
Chair, Corporate Leadership Initiative, Business Roundtable

C: The Honorable Mary L. Schapiro, Chairman
The Honorable Kathleen L. Casey, Commissioner
The Honorable Elisse B. Walter, Commissioner
The Honorable Luis A. Aguilar, Commissioner
The Honorable Troy A. Paredes, Commissioner
Ms. Meredith B. Cross, Director, Division of Corporation Finance
Mr. David M. Becker, General Counsel and Senior Policy Director
Ms. Kayla J. Gillan, Senior Advisor to the Chairman

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Appendix

Companies Removed from the S&P 500, 2008 (in order of removal)

Company	Date Removed (2008)	Sector	Sub-Industry	At Risk?	Removed due to low market value	Spin-off	Reincorp.	Bankrupt	Private Equity Buyout	Acquired by company (by type)	Acquired "under duress"
Harrah's Entertainment	Jan. 28	Consumer Discretionary	Casinos	No					Yes		
Circuit City Stores Inc.	Mar. 28	Consumer Discretionary	Computer Retailing	Yes	Yes						
Commerce Bancorp	Mar. 28	Financials	Regional Bank	No						Non S&P 500 public company	
The Bear Stearns Companies Inc.	June 2	Financials	Investment Banking	Yes						S&P 500	Yes
Trane Inc.	June 6	Industrials	Building Products	No		Yes					
Ambac Financial Group, Inc.	June 10	Financials	Insurance	Yes	Yes						
Brunswick Corporation	June 20	Consumer Discretionary	Leisure Manufacturing	Yes	Yes						
OfficeMax Inc.	June 20	Consumer Discretionary	Speciality Stores	Yes	Yes						
Countrywide Financial Corporation	June 30	Financials	Thrifts/Mortgages	Yes						S&P 500	Yes

APPENDIX

COMPANIES REMOVED FROM THE S&P 500, 2008 (IN ORDER OF REMOVAL)

Company	Date Removed (2008)	Sector	Sub-Industry	At Risk?	Removed due to low market value	Spin-off	Reincorp.	Bankrupt	Private Equity Buyout	Acquired by company (by type)	Acquired "under duress"
E.W. Scripps	June 30	Consumer Discretionary	Broadcasting	No		Yes					
ACE Ltd.	June 30	Financials	Insurance	No			Yes				
Clear Channel Communications, Inc.	July 30	Consumer Discretionary	Broadcasting	No					Yes		
IAC/ InterActive Corporation	Aug. 20	Consumer Discretionary	Internet Retailing	No		Yes					
Electronic Data Systems	Aug. 26	IT	Data Processing	No						S&P 500	
Federal Home Loan Mortgage Corporation	Sept. 10	Financials	Thrifts/Mortgages	Yes	Yes						
Federal National Mortgage Association	Sept. 10	Financials	Thrifts/Mortgages	Yes	Yes						
Lehman Brothers	Sept. 16	Financials	Investment Banking	Yes				Yes			

Appendix

Companies Removed from the S&P 500, 2008 (in order of removal)

Company	Date Removed (2008)	Sector	Sub-Industry	At Risk?	Removed due to low market value	Spin-off	Reincorp.	Bankrupt	Private Equity Buyout	Acquired by company (by type)	Acquired "under duress"
Safeco Corporation	Sept. 22	Financials	Insurance	No						Non S&P 500 public company	
Washington Mutual	Sept. 29	Financials	Thrifts/Mortgages	Yes						S&P 500	Yes
Wendy's International, Inc.	Sept. 29	Consumer Discretionary	Restaurants	No						Non S&P 500 public company	
Wm. Wrigley Junior Co.	Oct. 3	Consumer Staples	Packaged Foods	No						Private company	
Dillard's, Inc.	Oct. 21	Consumer Discretionary	Department Stores	Yes	Yes						
MGIC Investment Corporation	Oct. 30	Financials	Thrifts/Mortgages	Yes	Yes						
Terex Corporation	Nov. 5	Industrials	Construction/ Heavy Trucks	Yes	Yes						
Unisys Corporation	Nov. 10	IT	IT Consulting	Yes	Yes						
General Growth Properties Inc.	Nov. 12	Financials	REITs (Mall Owner)	Yes	Yes						
Ashland, Inc.	Nov. 13	Materials	Chemicals	Yes	Yes						

Appendix

Companies Removed from the S&P 500, 2008 (in order of removal)

Company	Date Removed (2008)	Sector	Sub-Industry	At Risk?	Removed due to low market value	Spin-off	Reincorp.	Bankrupt	Private Equity Buyout	Acquired by company (by type)	Acquired "under duress"
Hercules Inc.	Nov. 13	Materials	Chemicals	No						Non S&P 500 public company	
Anheuser-Busch	Nov. 18	Consumer Staples	Brewing	No						Non S&P 500 public company	
Applied Biosystems Inc.	Nov. 21	Healthcare	Life Sciences	No						Non S&P 500 public company	
Liz Claiborne Inc.	Dec. 1	Consumer Discretionary	Apparel	Yes	Yes						
Allied Waste Industries, Inc.	Dec. 4	Industrials	Environmental	No						Acquirer moved into S&P 500	
Transocean Inc.	Dec. 18	Energy	Ocean Drilling	No			Yes				
Barr Pharmaceuticals, Inc.	Dec. 22	Healthcare	Pharma	No						Non S&P 500 public company	
Wachovia Corporation	Dec. 31	Financials	Diversified Banks	Yes						S&P 500	Yes
National City Corporation	Dec. 31	Financials	Regional Banks	Yes						Non S&P 500 public company	Yes
Merrill Lynch & Co.	Dec. 31	Financials	Investment Banking	Yes						S&P 500	Yes

Sources: Standard & Poor's web site; Factiva Searches