

# GROWTHWORKS

## CAPITAL LTD.

September 28, 2007

Nancy M. Morris  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090  
*By email to rule-comments@sec.gov*

Re: File Number S7-16-07

Dear Ms. Morris:

The undersigned institutional investors represent more than \$950,000,000 in invested capital. We are signatories to the United Nations' Principles for Responsible Investment ("PRI"), a set of voluntary principles designed to align investment strategies with societal needs.<sup>1</sup> As fiduciaries, PRI signatories are actively working to integrate social, environmental and governance factors into our investment processes. This July, the PRI celebrated its first anniversary, with a total of \$9 trillion represented by endorsing firms.

As responsible investors, we are keenly focused on establishing and supporting effective communication channels between shareholders and corporate management. The second of the six Principles for Responsible Investment commits signatories to active engagement with our portfolio holdings, including filing shareholder resolutions on long-term social, environmental and governance issues, when appropriate. Many of us have been deeply involved in various engagement activities with our portfolio holdings as a means to protect long-term shareholder value, as well as to advance broader sustainability objectives.

We are writing to you today in response to the Commission's request for public comment on Release No. 34-56160 (Shareholder Proposals) ("the Release"). We were alarmed to read the series of questions posed in Section C of the Release, relating to non-binding shareholder proposals. Although it is difficult to ascertain the Commission's intentions from these open-ended and wide-ranging questions, we believe the implications are dramatic, and deeply troubling. If these concepts should be brought to the rulemaking phase, we believe this would set back our efforts to foster more accountable capital markets at a time when concepts of responsible investment and corporate social responsibility are gaining significant ground globally.

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<sup>1</sup> <http://www.unpri.org/>

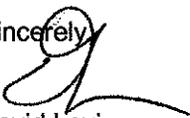
Virtually every month, we are seeing new and more substantial studies on the materiality of environmental, social and governance factors. In 2005, the law firm of Freshfields Bruckhaus Deringer issued a survey of the law of fiduciary duty in the United States, Europe, Japan, Canada and Australia, and concluded that in every jurisdiction, fiduciary duty arguably requires the consideration of environmental, social and governance factors when these factors may impact the long-term value of the portfolio.<sup>2</sup> Non-binding shareholder proposals have served a critical function by helping to convince U.S. companies to adopt more responsible governance practices, to issue sustainability reports disclosing indicators of social and environmental performance, and to take meaningful steps to address these previously unrecognized risks. As fiduciaries, we greatly value the role these proposals have played in protecting the long-term value of our investments.

We were also alarmed by a number of concepts raised in the Release that suggest that the Commission may be willing to delegate its authority to regulate the proxy statement, or to tolerate an inconsistent and confusing landscape of proxy rules and procedures. As investors with broadly diversified holdings, we value consistent and transparent markets. In our view, the concepts discussed in the Release that would permit individual companies or their shareholders to determine the rules and procedures governing the submission of non-binding proposals would not serve the public interest or the goal of investor protection. These concepts would merely serve to insulate certain companies from a highly effective mechanism for corporate-shareholder communications, and render these entities less accountable. Far from furthering the goal of efficient capital formation, it would more likely lead to a hodgepodge of inconsistent requirements.

For decades, the non-binding shareholder resolution has served as a critical tool for improving corporate governance, and for holding corporate management and boards of directors accountable to a broad range of stakeholder concerns, many of which present legitimate risks to long-term shareholder value. We believe this tool, and the current rules that govern its use, have served companies and shareholders well, and has positively contributed to the global competitiveness of the U.S. markets. Rather than encourage shareholders to raise these issues as binding bylaw amendments – one clear implication of the Release – we encourage the Commission to continue to allow the directors of U.S. companies to address these issues as responsible fiduciaries, acting in the best long-term interests of their companies.

We urge you to abandon any plans to alter Rule 14a-8, or to delegate the important authority to govern the proxy process to individual issuers, or to state courts. We will continue to watch these developments closely, and appreciate the opportunity to comment on this critically important corporate governance matter.

Sincerely,



David Levi  
President & CEO

cc: Chairman Christopher Cox  
Commissioner Paul S. Atkins  
Commissioner Roel C. Campos  
Commissioner Kathleen L. Casey  
Commissioner Annette L. Nazareth

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<sup>2</sup> “A legal framework for the integration of environmental, social and governance issues into institutional investment”, produced for the Asset Management Working Group of the UNEP Financial Initiative by Freshfields Bruckhaus Deringer (October 2005).