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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

October 1, 2007



Mr. Jeff Mahoney
General Counsel
Council of Institutional Investors
888 17th Street, NW
Suite 500
Washington, DC 20006-3310

Dear Mr. Mahoney:

Thank you for your August 8th letter to Chairman Cox regarding the rule proposals concerning shareholder proxy access that the Commission voted to publish for comment on July 25th. Because it relates to those rulemakings, a copy of your letter and this response will be placed in the appropriate rulemaking files.

Your letter asks for clarification of "whether the SEC staff will resume issuing no-action letters permitting the exclusion of shareowner resolutions on proxy statement access for board nominations in the absence of a final rule on the Commission's proposals." The question you raise was the subject of an extensive colloquy between the Commissioners and the staff at the Commission's Open Meeting on July 25th. I refer you to our website should you wish to listen to an archived recording of that Meeting or read an unofficial transcript of the Meeting (<http://www.sec.gov/news/openmeetings.shtml>).

As you may know, our intent is to have final rules in place this fall in time for the coming proxy season, because until that happens, there will continue to be great uncertainty across the nation – a situation that is highly undesirable. I would also note that our General Counsel, Brian G. Cartwright, addressed a question similar to yours at the Open Meeting, stating, "I think that the Division would be very much in the same position it was last time, and so it would be not inappropriate for it to take the same position." As I noted above, you can find a more comprehensive discussion of these matters in the archived recording or unofficial meeting transcript on our website. Of course, any no-action request is fact-specific, and there may be any number of bases on which a company could rely to exclude a proposal. Accordingly, there is no way to predict what response the staff may provide to any specific future proposal.

Please feel free to contact me should you wish to discuss this or any other matter.

Sincerely,

John W. White
John W. White
Director

COUNCIL OF INSTITUTIONAL INVESTORS

Via Hand Delivery

August 8, 2007

The Honorable Christopher Cox
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

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RECEIVED
2001 AUG - 8 PM 4: 30
CHAIRMAN'S
CORRESPONDENCE UNIT

Re: July 25, 2007, Securities and Exchange Commission ("SEC" or "Commission") Open Meeting: "Meeting the Competitive Challenges of the Global Marketplace" ("July 25th Meeting")

Dear Mr. Chairman:

I am writing on behalf of the Council of Institutional Investors ("Council"), an association of more than 130 public, corporate, and union pension funds with combined assets of over \$3 trillion. As a leading voice for long-term, patient capital, the Council has long advocated a policy that "shareowners should have meaningful opportunities to suggest or nominate director candidates and to suggest processes and criteria for director selection and evaluation."¹ Thus, the SEC's July 25th Meeting and the resulting proposed rules: (1) Shareholder Proposals (File Number S7-16-07) and (2) Shareholder Proposals Relating to the Election of Directors (File Number S7-17-07) are of great interest to our members.

¹ Council of Institutional Investors ("Council"), Annual Report, at 34 (Jan. 2007).

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In observing the July 25th Meeting, it was our understanding that, in response to questions raised by Commissioner Roel C. Campos, the SEC staff indicated that they would maintain the status quo and *would not* resume issuing no-action letters permitting the exclusion of shareowner resolutions on proxy statement access for board nominations *unless* a final rule is adopted which makes exclusions of such resolutions permissible. We, therefore, were surprised and concerned by Commissioner Paul S. Atkins' recent remarks on this issue before the Federal Reserve Bank of Chicago. Those remarks include the following statement about the July 25th Meeting:

We specifically adopted a current interpretation of the director election exclusion that is consistent with the SEC's long-standing interpretation and the interpretation that we put forward to the Second Circuit. As directed by the court, we have provided a thorough explanation for that position. This interpretation, *which now governs our administration of that provision*, will provide the necessary clarity and uniformity for both investors and companies alike *until an amendment is adopted in the future.*²

Commissioner Atkins' remarks appear to be in direct conflict with statements made by the SEC staff at the July 25th Meeting. Given the importance of this issue to the Council and its members,³ we would respectfully request that you please clarify whether the SEC staff will resume issuing no-action letters permitting the exclusion of shareowner resolutions on proxy statement access for board nominations in the absence of a final rule on the Commission's proposals.

² Commissioner Paul S. Atkins, Remarks Before the Federal Reserve Bank of Chicago Seventh Annual Private Equity Conference 6 (Aug. 2, 2007), available at <http://www.sec.gov/news/speech/2007/spch080207psa.htm> (emphasis added).

³ As you may be aware, the Council filed a brief as *amicus curiae* in support of Plaintiff-Appellant in American Federation of State, County & Municipal Employees Pension Plan v. American International Group, Inc. (2d Cir. 2005) (No. 05-2825).

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Thank for your attention to this matter. We look forward to your reply.

Sincerely,

A handwritten signature in black ink that reads "Jeff Mahoney". The signature is written in a cursive, flowing style.

Jeff Mahoney
General Counsel

CC: Commissioner Paul S. Atkins
Commissioner Roel C. Campos
Commissioner Kathleen L. Casey
Commissioner Annette L. Nazareth
Director John W. White, Division of Corporation Finance
General Counsel Brian G. Cartwright, Office of General Counsel
Senator Christopher J. Dodd, Chairman, Committee on Banking,
Housing, and Urban Affairs
Senator Richard C. Shelby, Ranking Member, Committee on Banking,
Housing, and Urban Affairs
Representative Barney Frank, Chairman, Committee on Financial
Services
Representative Spencer Bachus, Ranking Member, Committee on
Financial Services