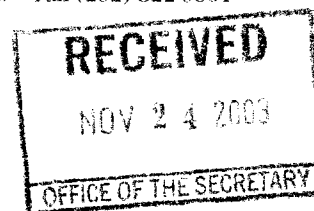


SR-NASD - 2002-138

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COUNCIL OF  
INSTITUTIONAL  
INVESTORS

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November 18, 2003

Jonathan G. Katz  
Securities and Exchange Commission  
450 Fifth Street NW  
Washington, DC 20549-0609

Re: File No. SR-NYSE-2002-33, SR-NASD 2002-141, SR-NASD-2002-77, SR-NASD-2002-80, SR-NASD-2002-138 and SR-NASD-2002-139.

Dear Mr. Katz:

The Council of Institutional Investors, an association of more than 140 corporate, public and union pension funds collectively holding more than \$3 trillion in pension assets, is writing to comment on the accelerated approval of various long-overdue changes to the NYSE and Nasdaq stock market listing standards.

Overall, the entire set of changes—including the initial proposals and the subsequent amendments—represent a significant improvement to previous standards. The new standards, long recognized as “best practices,” set appropriate thresholds for listed companies and are an important step toward restoring investor confidence in the way publicly traded companies are governed.

The Council is pleased that a number of amendments strengthened the Nasdaq standards and successfully narrowed the gap between the exchanges’ standards. The Council has long held that stock exchanges should not be permitted to race to the bottom on corporate governance listing standards. Ensuring that all exchanges—including those that have not yet changed their standards—adopt identical and rigorous corporate governance listing standards is in the best interest of the investing public.

However, the Council is disappointed that certain changes appeared to have been negotiated behind closed doors, free from investor input and public comments. While a number of these accelerated changes toughen and improve the standards, a few weaken them. Specifically, the Council opposes:

- Setting a three-year look-back period for reviewing director relationships. The Council endorses the five-year standard initially proposed by the NYSE and believes that rather than weakening the NYSE’s standard, the SEC should have toughened the Nasdaq’s standard to five years.

Jonathan G. Katz  
November 18, 2003  
Page 2 of 2

- Amending the business relationship test to examine only the revenues of the director's company. From the Council's perspective, the issue is whether a director has any relationships with the company that may compromise the director's objectivity and loyalty to shareholders. The Council believes that a director working for a customer/supplier representing a significant portion of a company's revenues may be influenced by factors that might interfere with the director's exercise of independent judgment.

Finally, the Council urges the **SEC** to ensure that all exchanges—including those that have not yet updated their standards—implement meaningful processes to ensure that the standards are reviewed and updated on an ongoing basis. To be effective, such processes must ensure that input is received from all interested parties, not simply listed companies and their legal counsel.

Given the rapid and constant changes in our capital markets, it is appropriate that listing standards be considered "living documents" that are kept current and relevant. The Council has long been frustrated that the exchanges have consistently allowed antiquated and weak corporate governance standards that do not offer adequate protections for investors to remain in place—too often, for decades.

Over the past fifty years, the exchanges have only updated their standards in the wake of devastating corporate scandals and in the face of Congressional pressure. This mentality must change before investors can have confidence that there are adequate rules—including accounting, disclosure and listing standards—and other safeguards in place to protect them.

Please contact me with any questions.

Sincerely,



Sarah A.B. Teslik  
Executive Director

Cc: Chairman William H. Donaldson  
Commissioner Paul S. Atkins  
Commissioner Roel C. Campos  
Commissioner Cynthia A. Glassman  
Commissioner Harvey J. Coldschmid  
Alan L. Beller, Director, Division of Corporation Finance  
Martin Dunn, Deputy Director, Division of Corporation Finance  
Annette Nazareth, Director, Division of Market Regulation