

COUNCIL OF INSTITUTIONAL INVESTORS

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September 15, 2004

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



Re: SR-NYSE-2004-41

Dear Mr. Katz:

The Council of Institutional Investors, an association of more than 140 corporate, public and union pension funds with more than \$3 trillion in pension assets, is writing to **oppose** some of the listing standard changes proposed by the New York Stock Exchange. The Council objects not only to the substance of certain proposed changes but also to the NYSE's surprise decision to propose weakening listing standards that were only formally put in place less than one year ago—after more than 12 previous months of discussion, public comment and give-and-take with the issuer and investor communities.

The Council's substantive opposition centers on proposed changes to the evaluation of director relationships with the outside auditor. Specifically the Council opposes:

1. Changing the evaluation of director ties to the outside auditor. The amendments—which the NYSE admitted were drafted because some directors weren't qualifying as independent—fall far short of the Council's standard and definitions used by other investors. The NYSE's attempt to justify the changes as consistent with the Amex/Nasdaq definitions is inappropriate; the Council strongly believes that the NYSE should be endorsing and enforcing the toughest possible standards for its listed companies; it should not be racing to match weaker standards.
2. Watering down the definition of immediate family member for purposes of assessing relationships with the outside auditor. As proposed, only spouses, minor children/stepchildren (who the Council suspects would not be gainfully employed by any professional organization, let alone an accounting firm), or adult children/stepchildren sharing a home with the director would count as immediate family. The change would exclude parents, children (regardless of their living situation), siblings, mothers- and fathers-in-law, sons- and daughters-in-law, brothers- and sisters-in-law and anyone sharing the director's home—all of whom are currently considered for other assessments under the NYSE definitions.

This proposed change is inconsistent with the Nasdaq/Amex approach and the definition endorsed by the Council and numerous investors. The Council finds no justification for this rollback except the NYSE's apparent wish to restart a race to the bottom on listing standards. Such a race, which the Council hoped had ended, harms investors and only serves to weaken investor confidence in the markets.

The detrimental impact of the proposed amendments cannot be over-emphasized. The board of directors is the cornerstone of the U.S. corporate governance system and an issue of fundamental importance to investors and Council members, who have long endorsed standards calling for a substantial majority of directors and all-independent audit, compensation and nominating committees. Investor interest in director independence issues has only increased in the wake of a number of shocking corporate scandals.

Council members and other investors expect the NYSE to set the gold standard for listing requirements, including rules governing/defining director independence. Unfortunately, the proposed changes suggest that the NYSE is more interested in pleasing its listed companies than protecting investors.

Given investors' ongoing concerns about auditor and director independence, the NYSE should be proposing even tougher standards for assessing these relationships—not lowering the bar so that more directors qualify as independent. And it certainly should not be soft-balling the definition of "family member" for the purpose of evaluating relationships with the auditor. From the Council's perspective, any analysis should focus on whether directors or their relatives (broadly defined) have or have had an employment connection to the audit firm—regardless of their title or specific role at the firm.

In light of the continued debate over how to define "independent director," the Council urges the SEC to act on rulemaking petitions filed more than five years ago by the Council and the AFL-CIO requesting enhanced disclosure of director links to companies. The members of the Council recognize that independent directors do not invariably share a single set of qualities that are not shared by non-independent directors. Consequently no clear rule can unerringly describe and distinguish independent directors. The Council also recognizes that various groups have different approaches for assessing independence. The Council continues to believe that the only solution to this persistent problem is to ensure that companies provide adequate disclosure of professional, financial and familial relationships between companies/executives and directors/relatives.

Finally, the Council notes that the proposal is an unfortunate indication that it's business as usual at the New York Stock Exchange. During the two-year process that culminated in the adoption of NYSE corporate governance listing standards, the Council and other investor representatives were invited to provide input and express views on what standards were likely to reassure investors about such issues as the independence of directors. Although in many specific aspects we would have chosen stricter rules, we respected the process by which the NYSE developed its listing standards. This latest proposal makes us ask, what was the point of going through a two-year give-and-take if the final product turns out to be only a rough draft that can be quickly and secretly revised to accommodate listed company concerns?

Please contact me with any questions.

Sincerely,



Sarah A. B. Tesik
Executive Director

cc: Chairman William H. Donaldson
Commissioner Paul S. Atkins
Commissioner Roel C. Campos

Commissioner Cynthia A. Glassman
Commissioner Harvey J. Goldschmid
Annette Nazareth, Director, Division of Market Regulation
John Thain, CEO, NYSE