Council of Institutional Investors

Testimony of

Ann Yerger

Executive Director

Council of Institutional Investors

before the

Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises

of the

United States House of Representatives Committee on Financial Services

Thursday, March 11, 2010

Corporate Governance after *Citizens United*

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Full Text of Statement

Chairman Kanjorski, Ranking Member Garrett, and Members of the Subcommittee:

Good morning. I am Ann Yerger, Executive Director, of the Council of Institutional Investors ("Council"). I am pleased to appear before you today on behalf of the Council. My testimony includes a brief overview of the Council followed by a discussion of our views on the following issues that you informed me were the basis for this important and timely hearing:

- Whether, and if so, why, Congress should take legislative action in light of the probable increase in corporate money in politics due to the *Citizens United* decision; and

- How Congress should, if at all, limit new corporate political activity that could arise as a result of the *Citizens United* decision, especially in the context of corporate governance.

The Council

Founded in 1985, the Council is a nonpartisan, not-for-profit association of public, labor and corporate employee benefit funds with assets collectively exceeding $3 trillion. Our members are diverse, and include the Pennsylvania State Employees' Retirement System, Johnson & Johnson, and the IUE-CWA Pension Fund.[1] Today the organization is a leading advocate for improving corporate governance standards for U.S. public companies and strengthening investor rights.

[1] See Attachment 1 for a list of the Council's members. For more information of the Council, please visit www.cii.org.

Council members are responsible for investing and safeguarding assets used to fund retirement benefits for millions of participants and beneficiaries throughout the U.S. They have a significant commitment to the U.S. capital markets, with the average Council member investing nearly 60 percent of its entire portfolio in U.S. stocks and bonds.[2]

They are also long-term, patient investors due to their far investment horizons and their heavy commitment to passive investment strategies. Because these passive strategies restrict Council members from exercising the "Wall Street walk" and selling their shares when they are dissatisfied, corporate governance issues are of great interest to our members.

Whether, and if so, why, Congress should take legislative action in light of the probable increase in corporate money in politics due to the *Citizens United* decision.

The Council believes Congress should consider pursuing a legislative response to the Supreme Court's recent decision in *Citizens United v. Federal Election Commission* that achieves the following:

- Provides investors the information they need to judge whether specific political and charitable spending and the board's oversight of such spending is consistent with the long-term interest of shareowners; and

- Empowers investors with meaningful tools to hold boards accountable if they fail to properly monitor and assess these contributions.

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[2] Council of Institutional Investors, *Asset Allocation Survey 2009*, 4, www.cii.org/UserFiles/file/resource%20center/publications/2009%20Asset%20Allocation%20Survey%20FINAL.pdf ("Domestic stocks and bonds accounted for 57.5 percent of the average portfolio of surveyed Council members.").

The Council takes no position on the legal or public policy issues of the Supreme Court's recent ruling in *Citizens United*. Nor do we have an opinion on the Constitutional rights of corporations or the appropriate role of corporate political spending in our democracy. We come at this issue solely as an investor advocacy group that believes that political and charitable donations by public companies are corporate governance matters warranting robust board oversight, comprehensive public disclosure, and meaningful director accountability.

Corporate governance at its most fundamental is about ensuring that investors' capital is used to create long term value. Heightened scrutiny is warranted any time corporate executives give away investors' money. Given the potential conflicts and waste that may arise from political and charitable contributions, enhanced oversight is particularly important. The Council believes such oversight is best addressed by directors and shareowners through a combined approach focused on disclosure and board accountability.

Risks of Corporate Political and Charitable Spending

The Council recognizes that the vast majority of public companies do not engage in political spending. For example, during the 14 year period from 1991-2004, only 14 percent of all publicly traded firms made contributions at the federal level.[3] Yearly contributions by these companies collectively averaged slightly over $100 million.[4] When put in a business operations context, such political spending is immaterial. Similarly the amount companies contribute for philanthropic purposes is generally immaterial, averaging 0.1 percent of 2008 total revenues of 55 surveyed Fortune 100 companies.[5]

[3] Aggarwal, Rajesh K., Meschke, Felix and Wang, Tracy Yue, *Corporate Political Contributions: Investment or Agency?*, 1 (June 25, 2009). EFA 2008 Athens Meetings Paper. Available at SSRN: http://ssrn.com/abstract=972670
[4] *Id.* At 44.
[5] Committee Encouraging Corporate Philanthropy, *Giving in Numbers* (2009), www.corporatephilanthropy.org/resources/benchmarking-reports/giving-in-numbers.html

Nevertheless, there are real risks associated with political and charitable spending for companies and their shareowners. Left unchecked, management can contribute to favored candidates, causes, or charities that have no value to the company or even advocate positions contrary to shareowners' best interests.

Political and charitable contributions also present the potential for dangerous governance conflicts. Such donations can be used to capture or silence directors. For instance, donations from Enron and its top executives to organizations closely linked to the company's supposedly "independent" directors are an important cautionary tale of how donations may undermine robust board oversight.

During recent years prominent public companies such as Freddie Mac, Sears Roebuck and PepsiCo have paid record fines, incurred significant legal bills, and suffered damaged reputations as a result of their political expenditures.[6]

- Freddie Mac was fined a record $3.8 million by the Federal Election Commission (FEC) in 2006 to settle charges that it illegally used corporate resources for 85 fundraisers for members of Congress between 2000 and 2003. That was the FEC's largest civil penalty to date.[7]

[6] Center for Political Accountability, *Open Windows*, 1-7 (Jan. 1, 2007), www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/611.
[7] Id. at 5.

- Sears Roebuck was one of eight companies indicted in 2004 by a Texas Grand Jury for illegally donating more than $500,000 to Rep. Tom DeLay's Texans for a Republican Majority PAC in the 2002 elections. According to the Center for Political Accountability (CPA), "The total amount spent by these companies in legal costs is unknown, but likely far exceeds the political contributions that resulted in the indictments."[8]

- During the 2004 proxy season, PepsiCo, Union Pacific, BellSouth and Pfizer faced embarrassing reports that some of their soft money political contributions went to groups and candidates with positions that directly conflicted with their publicly stated policies providing benefits to same-sex couples.[9]

Council Policy

The Council is not in principle opposed to political or charitable contributions provided there is appropriate board oversight and transparency to ensure that such spending is consistent with long-term shareowner interests. In recognition of the importance of board oversight and disclosure, Council members adopted the following policy in 2006 regarding charitable and political contributions:

> **Board Monitoring, Assessment and Approval:** The board of directors should monitor, assess and approve all charitable and political contributions (including trade association contributions) made by the company. The board should only approve contributions that are consistent with the interests of the company and its shareowners. The terms and conditions of such contributions should be clearly defined and approved by the board.

[8] Id. at 6.
[9] Id.

> **Disclosure:** The board should develop and disclose publicly its guidelines for approving charitable and political contributions. The board should disclose on an annual basis the amounts and recipients of all monetary and non-monetary contributions made by the company during the prior fiscal year. Any expenditures earmarked for political or charitable activities that were provided to or through a third-party should be included in the report.[10]

Council members based this policy in response to members' concerns over the lack of transparency and accountability in the corporate political and charitable contributions process. Campaign finance rules do not require corporations to reveal or account for political contributions to the public, making it difficult for investors and the public to monitor corporate political activity. This lack of transparency compounds the issue of the wide discretion executives enjoy in making corporate political contributions with shareowner resources.

Charitable contributions are similarly under-disclosed. Current Securities and Exchange Commission (SEC) regulations require corporations to disclose charitable contributions that are "material to an investor's understanding of the company's business or financial statements," a standard which leaves considerable room for interpretation. Additionally, corporate tax returns often contain charitable contribution information that is aggregated and not clearly defined or explained. As for corporate foundations, many request lengthy extensions on filing 990-PFs with the Internal Revenue Service (IRS), resulting in substantial lag time on basic disclosure.

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[10] 2.13 Charitable and Political Contributions, *CII Corporate Governance Policies,* 6 www.cii.org/UserFiles/file/council%20policies/CII%20Full%20Corp%20Gov%20Policies%205-7-09.pdf.

As the elected representatives of shareowners, directors are charged with the broad responsibility of ensuring that the company is run in the best long-term interests of shareowners. Carrying out this mandate of oversight should include monitoring, assessing and approving corporate political and charitable contributions. As the source of assets used to fund corporate contributions, shareowners should have access to a board-approved contributions policy.

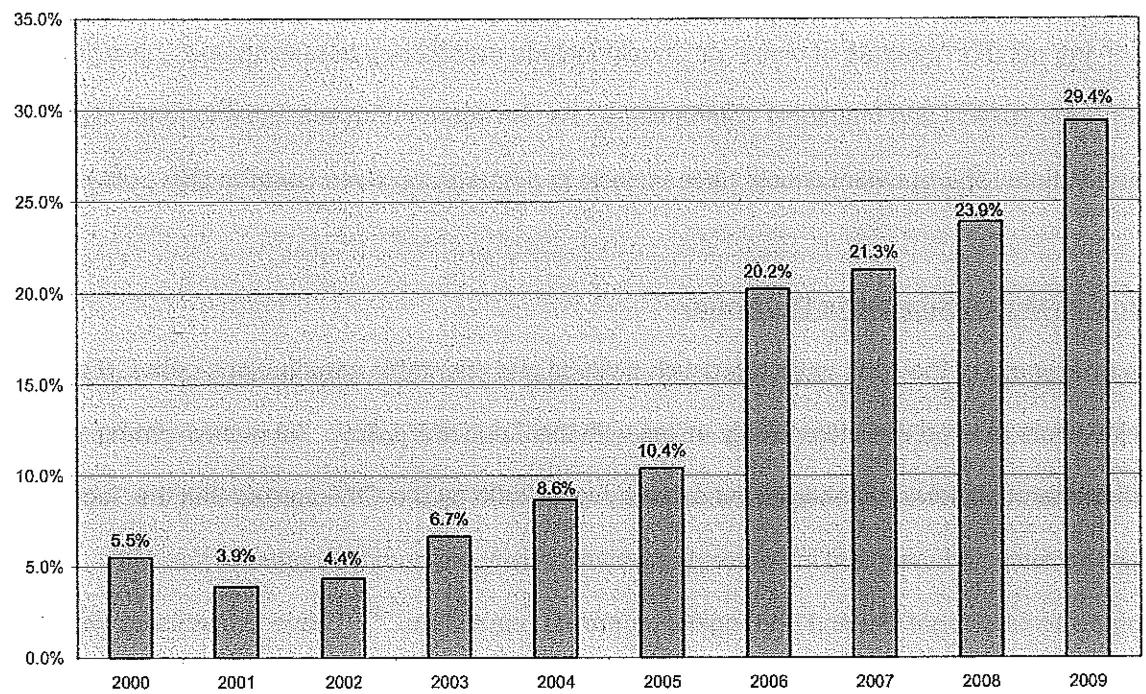
Growing Market Support for Disclosure

As awareness of the risks associated with political and charitable contributions grows, the views of investors at large are increasingly in line with the Council's policy. An overwhelming majority (85 percent) of individual shareowners surveyed in 2006 by the CPA agreed that the "lack of transparency and oversight in corporate political activity encourages behavior that puts corporations at legal risk and endangers corporate reputations."[11] Those investors surveyed further agreed that companies should disclose all political contributions as well as the board's guidelines for approving such spending.[12]

Since 2005, three non-binding shareowner proposals requesting disclosure of political spending have received a majority of investor support.[13] Shareowner support for these resolutions has steadily grown since 2000, averaging nearly 30 percent in 2009, a significant statement of investor support.[14] When compared to the initial 5.5 percent level of support in 2000, the current average represents more than a five-fold increase over 10 years.[15] This is an important trend that demonstrates that shareowners take political spending seriously.

[11] Center for Political Accountability, *Survey of Shareholders*, 6 (2006) www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/918
[12] Id. at 12-13.
[13] RiskMetrics
[14] Id.
[15] Id.

Average Investor Support for Resolutions Requesting Political Contributions Disclosure



Source: RiskMetrics

So-called "activist" investors are hardly the only institutional investors calling for greater transparency. Prominent mutual fund families such as Wells Fargo, Goldman Sachs, Morgan Stanley and many others have voted in favor of disclosure of corporate political spending.[16] The market is sending a clear message that greater transparency is needed.

[16] Center for Political Accountability, "In About Face, Top Mutual Funds Support Political Disclosure Resolutions in 2008 Proxy Season" (Dec. 11, 2008) www.politicalaccountability.net/index.php?ht=d/ReleaseDetails/i/1189.

Many corporations are listening to investors and the market. In what is rapidly emerging as a corporate governance best practice among America's top companies, 65 S&P 500 companies have already voluntarily adopted disclosure of their political spending.[17] Of these 65 corporations, 44 are members of the S&P 100, some of the nation's largest and most influential corporations.[18] In light of growing investor support for disclosure, this trend is likely to continue.

How Congress should, if at all, limit new corporate political activity that could arise as a result of the *Citizens United* decision, especially in the context of corporate governance.

The Council does not advocate limiting corporate political or philanthropic activity. Instead, we believe Congress should take steps to facilitate a market-driven solution encompassing the following:

- Requiring all public companies to disclose their charitable and political donations as well as their board's policy for monitoring, assessing, and approving such spending.

- Mandating that contribution amounts and recipients should be available electronically in a widely used format, properly tagged for easy analysis and comparison.

- Ensuring that shareowners have meaningful tools to hold directors accountable if they are disappointed with the oversight performed by the directors.

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[17] Center for Political Accountability, "Political disclosure gains new support among S&P 100 companies as 2009 proxy season closes" (July 21, 2009) www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/2250

[18] Id.

Holding Corporate Directors Accountable

While robust disclosure of political and charitable contributions is crucial, at the end of the day, meaningful tools to hold directors accountable are needed to ensure that boards take their oversight duties seriously. If investors believe directors are not properly handling oversight of political and charitable spending, they should be able to remove those directors or propose alternative candidates.

Combined with increased disclosure, the most effective and lasting way to enhance shareowner oversight of political contributions is to strengthen shareowner oversight of *boards*. The most fundamental right of investors is the right to nominate and elect directors, yet corporate elections are broken. The current system of rubber stamp voting and management's monopoly of the ballot are embarrassingly unworthy of our democracy.

Majority Voting for Directors

Directors are the cornerstone of the U.S. corporate governance model. And while the primary powers of shareowners—aside from buying and selling their shares—are to elect and remove directors, U.S. shareowners have few tools to exercise these critical and most basic rights.

The Council believes the accountability of directors at most U.S. companies is weakened by the fact that shareowners do not have a meaningful vote in director elections. Under most state laws the default standard for uncontested director elections is a plurality vote, which means that a director is elected in an uncontested situation even if a majority of the shares are withheld from the nominee.

The Council has long believed that a plurality standard for the election of directors is inherently unfair and undemocratic and that a majority vote standard is the appropriate one. The concept of majority voting is difficult to contest—especially in this country. And today majority voting is endorsed by all types of governance experts, including law firms advising companies and corporate boards.

Majority voting makes directors more accountable to shareowners by giving meaning to the vote for directors and eliminating the current "rubber stamp" process. The benefits of this change are many: it democratizes the corporate electoral process; it puts real voting power in hands of investors; and it results in minimal disruption to corporate affairs—it simply makes board's representative of shareowners.

The corporate law community has taken some small steps toward majority voting. In 2006 the ABA Committee on Corporate Laws approved amendments to the Model Business Corporation Act to accommodate majority voting for directors, and lawmakers in Delaware, where most U.S. companies are incorporated, amended the state's corporation law to facilitate majority voting in director elections. But in both cases they stopped short of switching the default standard from plurality to majority.

Since 2006 some companies have volunteered to adopt majority voting standards, but in many cases they have only done so when pressured by shareowners forced to spend tremendous amounts of time and money on company-by-company campaigns to advance majority voting.

To date larger companies have been receptive to adopting majority voting standards. Plurality voting is the standard at less than a third of the companies in the S&P 500. However, plurality voting is still very common among the smaller companies included in the Russell 1000 and 3000 indices. Over half (54.5 percent) of the companies in the Russell 1000, and nearly three-quarters (74.9 percent) of the companies in the Russell 3000, still use a straight plurality voting standard for director elections. Statistics are not available for the thousands of additional companies not included in these indices; however, the Council believes most do not have majority voting standards.

Plurality voting is a fundamental flaw in the U.S. corporate governance system. It is time to move the default standard to majority voting. Given the failure by the states, particularly Delaware, to take the lead on this reform, the Council believes the time has come for the U.S. Congress to legislate this important and very basic shareowner right.

Shareowner Access to the Proxy

Nearly 70 years have passed since the SEC first considered whether shareowners should be able to include director candidates on management's proxy card. This reform, which has been studied and considered on and off for decades, is long overdue. Its adoption would be one of the most significant and important investor reforms by any regulatory or legislative body in decades.

The Council applauds the SEC for its leadership on this important issue. We strongly support the Commission's outstanding proposal, Facilitating Shareholder Director Nominations. It is our firm belief that a federal approach is far superior to a state-by-state system.

The Council believes proxy access would substantially contribute to the health of the U.S. corporate governance model and U.S. corporations by making boards more responsive to shareowners, more thoughtful about whom they nominate to serve as directors and more vigilant about their oversight responsibilities, including oversight of political and charitable spending.

As such, Council members approved the following policy endorsing shareowner access to the proxy:

> Companies should provide access to management proxy materials for a long-term investor or group of long-term investors owning in aggregate at least three percent of a company's voting stock, to nominate less than a majority of the directors. Eligible investors must have owned the stock for at least two years. Company proxy materials and related mailings should provide equal space and equal treatment of nominations by qualifying investors.
>
> To allow for informed voting decisions, it is essential that investors have full and accurate information about access mechanism users and their director nominees. Therefore, shareowners nominating director candidates under an access mechanism should adhere to the same SEC rules governing disclosure requirements and prohibitions on false and misleading statements that currently apply to proxy contests for board seats.[19]

[19] 3.2 Access to the Proxy, *CII Corporate Governance Policies,* 6-7 www.cii.org/UserFiles/file/council%20policies/CII%20Full%20Corp%20Gov%20Policies%205-7-09.pdf.

The Council believes Congress should support the SEC's efforts by affirming the Commission's authority to promulgate rules allowing shareowners to place their nominees for director on management's card. The Council believes the SEC has the authority to approve an access standard. However others disagree, and the Commission is likely to face unnecessary, costly and time-consuming litigation in response to a Commission-approved access mechanism. To ensure that owners of U.S. companies face no needless delays over the effective date of this critical reform, the Council recommends legislative reaffirmation of the SEC's authority as the House recently passed in the Wall Street Reform and Consumer Protection Act of 2009 (H.R. 4173).

Of note, the Council believes access to the proxy complements majority voting for directors. Majority voting is a tool for shareowners to remove directors. Access is a tool for shareowners to elect directors.

<u>Conclusion</u>

Greater investor oversight of political and charitable spending should be the goal. But this approach will only work if our corporate governance systems change. Disclosure alone is simply not enough. Directors should no longer be allowed to serve if they enjoy less than majority support of investors—majority voting must be the default standard at our public companies. Large, long-term investors should also be granted a reasonable right of access to the corporate proxy to nominate their own candidates for less than a majority of the board.

Such changes will foster a director election system rooted in accountability that is worthy of American democracy. Without these basic reforms, shareowners will not have the tools they need to hold boards accountable for their performance overseeing charitable and political contributions.

Thank you, Mr. Chairman for inviting me to participate at this hearing. I look forward to the opportunity to respond to any questions.

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Attachment 1

Council General Members

Council of Institutional Investors

General Members*

Last Updated: March 2009

AFL-CIO Pension Plan
AFSCME
Alameda County Employees' Retirement Association
Arkansas Public Employees Retirement System
Best Buy
BP America Master Trust for Employee Pension Plans
Bricklayers & Trowel Trades International Pension Fund
Building Trades United Pension Trust Fund Milwaukee and Vicinity
California Public Employees' Retirement System
California State Teachers' Retirement System
Campbells Soup Company Retirement & Pension Plans
Casey Family Programs
Central Laborers' Pension Fund
Central Pension Fund of the Operating Engineers
CERES Inc. Defined Contribution Retirement Plan & Tax Deferred Annuity
Chevron Master Pension Trust
Coca-Cola Retirement Plan
Colorado Fire & Police Pension Association
Communications Workers of America Pension Fund
Connecticut Retirement Plans and Trust Funds
Contra Costa County Employees' Retirement Association
CWA/ITU Negotiated Pension Plan
Delaware Public Employees' Retirement System
Detroit General Retirement System
District of Columbia Retirement Board
Eastern Illinois University Foundation
Edison International
EMC Corporation
Employees' Retirement Fund of the City of Dallas
Evangelical Lutheran Church in America Board of Pensions
Fairfax County Educational Employees' Supplementary Retirement System
FedEx Corporation
Florida State Board of Administration
Gap Inc.
General Mills, Inc. Retirement Plan
Hartford Municipal Employees Retirement Fund
HSBC
I.A.M. National Pension Fund
Idaho Public Employee Retirement System

* General membership in the Council is open to any employee benefit plan, state or local agency officially charged with the investment of plan assets, or non-profit endowment funds and non-profit foundations. General Members participate in all meetings and seminars sponsored by the Council and are the only voting members of the Council. Annual dues are $1.30 per $1 million in fund assets, but no less than $3,000 and no more than $30,000.

Illinois State Board of Investment
Illinois Teachers' Retirement System
International Brotherhood of Electrical Workers' Pension Benefit Fund
International Union, UAW- Staff Retirement Income Plan
Iowa Municipal Fire & Police Retirement System
Iowa Public Employees' Retirement System
IUE-CWA Pension Fund
Jacksonville Police and Fire Pension Fund
Johnson & Johnson General Pension Trust
Kern County Employees' Retirement Association
KeyCorp Cash Balance Pension Plan
Laborers National Pension Fund
LIUNA Staff and Affiliates Pension Fund
Los Angeles City Employees' Retirement System
Los Angeles County Employees Retirement Association
Los Angeles Water and Power Employees' Retirement Plan
Maine Public Employees Retirement System
Marin County Employees' Retirement Association
Massachusetts Bay Transportation Authority Retirement Fund
Massachusetts Laborers' Health and Welfare Fund
Massachusetts Pension Reserves Investment Management Board
Merck
Microsoft Corporation Savings Plus 401(k) Plan
Milwaukee Employees' Retirement System
Minnesota State Board of Investment
Missouri Public School & Public Education Employee Retirement Systems
Missouri State Employees' Retirement System
Montgomery County Employees' Retirement System
Municipal Employees' Retirement System of Michigan
Nathan Cummings Foundation
National Education Association Employee Retirement Plan
Navy-Marine Corps Relief Society
New Hampshire Retirement System
New Jersey Division of Investment
New York City Employees' Retirement System
New York City Pension Funds
New York State and Local Retirement System
New York State Teachers' Retirement System
North Carolina Retirement Systems
Ohio Police & Fire Pension Fund
Ohio Public Employees Retirement System
Orange County Employees Retirement System
Oregon Public Employees Retirement System
Pennsylvania Public School Employees' Retirement System
Pennsylvania State Employees' Retirement System
Plumbers & Pipefitters National Pension Fund
Prudential Employee Savings Plan
Public Employees' Retirement Association of Colorado
Sacramento County Employees' Retirement System
San Diego City Employees' Retirement System

San Francisco City and County Employees' Retirement System
Santa Barbara County Employees' Retirement System
Sara Lee Corporation Salaried Pension Plan
School Employees Retirement System of Ohio
Sealed Air Corporation Retirement Plans
SEIU Pension Fund
Sheet Metal Workers' National Pension Fund
Sonoma County Employees Retirement Association
State of Wisconsin Investment Board
State Retirement and Pension System of Maryland
State Teachers Retirement System of Ohio
State Universities Retirement System of Illinois
Sunoco, Inc.
Target Corporate Pension Plan
Teamster Affiliates Pension Plan
Texas Municipal Retirement System
Texas Teacher Retirement System
The Union Labor Life Insurance Co.
UNITE HERE Laundry & Dry Cleaning Workers Pension Fund
UNITE HERE National Retirement Fund
United Food and Commercial Workers International Pension Plan
United States Steel and Carnegie Pension Fund
UnitedHealth Group Incorporated Retirement Plans
Vermont Pension Investment Committee
Washington State Investment Board
West Virginia Investment Management Board

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Attachment 2

Council Board of Directors

Council of Institutional Investors

Board of Directors

The Council of Institutional Investors is governed by a volunteer board of directors. The board consists of 15 directors who hail from public, union and corporate pension funds across the country.

Board Officers

Chair:
Joe Dear, California Public Employees' Retirement System
Joe Dear is chief investment officer of California Public Employees' Retirement System

Co-chairs:
Lydia Beebe, Chevron Master Pension Trust
Lydia Beebe is corporate secretary & chief governance officer at Chevron

Warren Mart, I.A.M. National Pension Fund
Warren Mart is general secretary-treasurer of the International Association of Machinists and Aerospace Workers

Gregory Smith, Public Employees' Retirement Association of Colorado
Gregory Smith is general counsel of the Public Employees' Retirement Association of Colorado

Treasurer:
Gail Hanson, State of Wisconsin Investment Board
Gail Hanson is deputy executive director of State of Wisconsin Investment Board

Secretary:
Patrick J. O'Neill, United Food and Commercial Workers International Union Staff Trust Fund
Patrick J. O'Neill is executive vice president of the United Food and Commercial Workers International Union

Board Members
Luke Bierman, New York State and Local Retirement System
Luke Bierman is general counsel for the Office of the State Comptroller of New York

Kenneth Colombo, Sheet Metal Workers' National Pension Fund
Kenneth Colombo is fund coordinator for the Sheet Metal Workers' National Pension Fund

Richard Metcalf, LIUNA Staff and Affiliates Pension Fund
Richard Metcalf is director of the corporate affairs department at LIUNA Staff and Affiliates Pension Fund

Meredith Miller, Connecticut Retirement Plans and Trust Funds
Meredith Miller is assistant treasurer for policy at Connecticut Retirement Plans and Trust Funds

Jody Olson, Idaho Public Employee Retirement System
Jody Olson is board chair of Idaho Public Employee Retirement System

Susan Permut, EMC Corp.
Susan Permut is senior vice president and deputy general counsel for EMC

Anne Sheehan, California State Teachers' Retirement System
Anne Sheehan is director of corporate governance at California State Teachers' Retirement System

Shelley Smith, Los Angeles City Employees' Retirement System
Shelley Smith is vice president of the Los Angeles City Employees' Retirement System Board of Administration

Michael Travaglini, Massachusetts Pension Reserves Investment Management Board
Michael Travaglini is executive director of Massachusetts Pension Reserves Investment Management Board

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Attachment 3

Council Corporate Governance Policies

Council of Institutional Investors

The Council of Institutional Investors
Corporate Governance Policies

CONTENTS:

1. Introduction

1.1 **Nature and Purpose of the Council's Corporate Governance Policies:** Council policies are designed to provide guidelines that the Council has found to be appropriate in most situations. They bind neither members nor corporations.

1.2 **Federal and State Law Compliance:** The Council expects that corporations will comply with all applicable federal and state laws and regulations and stock exchange listing standards.

1.3 **Disclosed Governance Policies and Ethics Code:** The Council believes every company should have written, disclosed governance procedures and policies, an ethics code that applies to all employees and directors, and provisions for its strict enforcement. The Council posts its corporate governance policies on its Web site (www.cii.org); it hopes corporate boards will meet or exceed these standards and adopt similarly appropriate additional policies to best protect shareowners' interests.

1.4 **Accountability to Shareowners:** Corporate governance structures and practices should protect and enhance a company's accountability to its shareowners, and ensure that they are treated equally. An action should not be taken if its purpose is to reduce accountability to shareowners.

1.5 **Shareowner Participation:** Shareowners should have meaningful ability to participate in the major fundamental decisions that affect corporate viability, and meaningful opportunities to suggest or nominate director candidates and to suggest processes and criteria for director selection and evaluation.

1.6 **Business Practices and Corporate Citizenship:** The Council believes companies should adhere to responsible business practices and practice good corporate citizenship. Promotion, adoption and effective implementation of guidelines for the responsible conduct of business and business relationships are consistent with the fiduciary responsibility of protecting long-term investment interests.

1.7 **Governance Practices at Public and Private Companies:** Publicly traded companies, private companies and companies in the process of going public should practice good governance. General members of venture capital, buyout and other private equity funds should encourage companies in which they invest to adopt long-term corporate governance provisions that are consistent with the Council's policies.

1.8 **Reincorporation:** U.S. companies should not reincorporate to offshore locations where corporate governance structures are weaker, which reduces management accountability to shareowners.

2. <u>The Board of Directors</u>

2.1 Annual Election of Directors
2.2 Director Elections
2.3 Independent Board
2.4 Independent Chair/Lead Director
2.5 All-independent Board Committees
2.6 Board Accountability to Shareowners
2.7 Board/Director Succession Planning and Evaluation
2.8 CEO Succession Planning
2.9 "Continuing Directors"
2.10 Board Size and Service
2.11 Board Operations
2.12 Auditor Independence
2.13 Charitable and Political Contributions

2.1 **Annual Election of Directors:** All directors should be elected annually. Boards should not be classified (staggered).

2.2 **Director Elections:** To the extent permitted under state law, companies' charters and bylaws should provide that directors in uncontested elections are to be elected by a majority of the votes cast. In contested elections, plurality voting should apply. An election is contested when there are more director candidates than there are available board seats. In addition, boards should adopt a policy asking all candidates for the board of directors, including incumbent directors and candidates nominated by shareowners, to tender conditional resignations in advance of any election, to take effect in the event that they fail to win majority support in uncontested elections. Should an incumbent director fail to achieve a majority of the votes cast in an uncontested election, the board should promptly determine whether to accept his or her resignation; if the board should decide not to accept the resignation, it should disclose that determination and the reasons for that action no less than 90 days after the date of the election. The policy should also provide that an incumbent director who fails to tender such a resignation will not be renominated for another term after his or her current term expires.

2.3 **Independent Board**: At least two-thirds of the directors should be independent; their seat on the board should be their only non-trivial professional, familial or financial connection to the corporation, its chairman, CEO or any other executive officer. The company should disclose information necessary for shareowners to determine whether directors qualify as independent. This information should include all of the company's financial or business relationships with and payments to directors and their families and all significant payments to companies, non-profits, foundations and other organizations where company directors serve as employees, officers or directors (*see Council definition of independent director, Section 7, below*).

2.4 **Independent Chair/Lead Director**: The board should be chaired by an independent director. The CEO and chair roles should only be combined in very limited circumstances; in these situations, the board should provide a written statement in the proxy materials discussing why the combined role is in the best interests of shareowners, and it should name a lead independent director who should have approval over information flow to the board, meeting agendas and meeting schedules to ensure a structure that provides an appropriate balance between the powers of the CEO and those of the independent directors.

Other roles of the lead independent director should include chairing meetings of non-management directors and of independent directors, presiding over board meetings in the absence of the chair, serving as the principle liaison between the independent directors and the chair and leading the board/director evaluation process. Given these additional responsibilities, the lead independent director should expect to devote a greater amount of time to board service than the other directors.

2.5 **All-independent Board Committees**: Companies should have audit, nominating and compensation committees, and all members of these committees should be independent. The board (not the CEO) should appoint the committee chairs and members. Committees should be able to select their own service providers. Some regularly scheduled committee meetings should be held with only the committee members (and, if appropriate, the committee's independent consultants) present. The process by which committee members and chairs are selected should be disclosed to shareowners.

2.6 **Board Accountability to Shareowners**

2.6a **Majority Shareowner Votes**: Boards should take actions recommended in shareowner proposals that receive a majority of votes cast for and against. If shareowner approval is required for the action, the board should seek a binding vote on the action at the next shareowner meeting.

2.6b **Interaction with Shareowners**: Directors should respond to communications from shareowners and should seek shareowner views on important governance, management and performance matters. To accomplish this goal, all companies should establish board-shareowner communications policies. Such policies should disclose the ground rules by which directors will meet with shareowners. The policies should also include detailed contact information for at least one independent director (but preferably for the independent board chair and/or the independent lead director and the independent chairs of the audit, compensation and nominating committees). Companies should also establish mechanisms by which shareowners with non-trivial concerns can communicate directly with all directors. Policies requiring that all director communication go through a member of the management team should be avoided unless they are for record-keeping purposes. In such cases, procedures documenting receipt and delivery of the request to the board and its response must be maintained and made available to shareowners upon request. Directors should have access to all communications. Boards should determine whether outside counsel should be present at meetings with shareowners to monitor compliance with disclosure rules.

All directors should attend the annual shareowners' meetings and be available, when requested by the chair, to answer shareowner questions. During the annual general meeting, shareowners should have the right to ask questions, both orally and in writing. Directors should provide answers or discuss the matters raised, regardless of whether the questions were submitted in advance. While reasonable time limits for questions are acceptable, the board should not ignore a question because it comes from a shareowner who holds a smaller number of shares or who has not held those shares for a certain length of time.

2.7 Board/Director Succession Planning and Evaluation

2.7a Board Succession Planning: The board should implement and disclose a board succession plan that involves preparing for future board retirements, committee assignment rotations, committee chair nominations and overall implementation of the company's long-term business plan. Boards should establish clear procedures to encourage and consider board nomination suggestions from long-term shareowners. The board should respond positively to shareowner requests seeking to discuss incumbent and potential directors.

2.7b Board Diversity: The Council supports a diverse board. The Council believes a diverse board has benefits that can enhance corporate financial performance, particularly in today's global market place. Nominating committee charters, or equivalent, ought to reflect that boards should be diverse, including such considerations as background, experience, age, race, gender, ethnicity, and culture.

2.7c Evaluation of Directors: Boards should review their own performance periodically. That evaluation should include a review of the performance and qualifications of any director who received "against" votes from a significant number of shareowners or for whom a significant number of shareowners withheld votes.

2.7d Board and Committee Meeting Attendance: Absent compelling and stated reasons, directors who attend fewer than 75 percent of board and board-committee meetings for two consecutive years should not be renominated. Companies should disclose individual director attendance figures for board and committee meetings. Disclosure should distinguish between in-person and telephonic attendance. Excused absences should not be categorized as attendance.

2.8 CEO Succession Planning: The board should approve and maintain a detailed CEO succession plan and publicly disclose the essential features. An integral facet of management succession planning involves collaboration between the board and the current chief executive to develop the next generation of leaders from within the company's ranks. Boards therefore should: (1) make sure that broad leadership development programs are in place generally; and (2) carefully identify multiple candidates for the CEO role specifically, well before the position needs to be filled.

2.9 "Continuing Directors": Corporations should not adopt so-called "continuing director" provisions (also known as "dead-hand" or "no-hand" provisions, which are most commonly seen in connection with a potential change in control of the company) that allow board actions to be taken only by: (1) those continuing directors who were also in office when a specified event took place or (2) a combination of continuing directors plus new directors who are approved by such continuing directors.

2.10 Board Size and Service: Absent compelling, unusual circumstances, a board should have no fewer than five and no more than 15 members (not too small to maintain the needed expertise and independence, and not too large to function efficiently). Shareowners should be allowed to vote on any major change in board size.

Companies should establish and publish guidelines specifying on how many other boards their directors may serve. Absent unusual, specified circumstances, directors with full-time jobs should not serve on more than two other boards. Currently serving CEOs should not serve as a director of more than one other company, and then only if the CEO's own company is in the top half of its peer group. No other director should serve on more than five for-profit company boards.

2.11 Board Operations

2.11a Informed Directors: Directors should receive training from independent sources on their fiduciary responsibilities and liabilities. Directors have an affirmative obligation to become and remain independently familiar with company operations; they should not rely exclusively on information provided to them by the CEO to do their jobs. Directors should be provided meaningful information in a timely manner prior to board meetings and should be allowed reasonable access to management to discuss board issues.

2.11b Director Rights Regarding Board Agenda: Any director should be allowed to place items on the board's agenda.

2.11c Executive Sessions: The independent directors should hold regularly scheduled executive sessions without any of the management team or its staff present.

2.12 Auditor Independence

2.12a Audit Committee Responsibilities Regarding Outside Auditors: The audit committee should have the responsibility to hire, oversee and, if necessary, fire the company's outside auditor.

2.12b Competitive Bids: The audit committee should seek competitive bids for the external audit engagement at least every five years.

2.12c Non-audit Services: A company's external auditor should not perform any non-audit services for the company, except those, such as attest services, that are required by statute or regulation to be performed by a company's external auditor.

2.12d Audit Committee Charters: The proxy statement should include a copy of the audit committee charter and a statement by the audit committee that it has complied with the duties outlined in the charter.

2.12e Liability of Outside Auditors: Companies should not agree to limit the liability of outside auditors.

2.12f Shareowner Votes on the Board's Choice of Outside Auditor: Audit committee charters should provide for annual shareowner votes on the board's choice of independent, external auditor. Such provisions should state that if the board's selection fails to achieve the support of a majority of the for-and-against votes cast, the audit committee should: (1) take the shareowners' views into consideration and reconsider its choice of auditor and (2) solicit the views of major shareowners to determine why broad levels of shareowner support were not achieved.

2.12g Disclosure of Reasons Behind Auditor Changes: The audit committee should publicly provide to shareowners a plain-English explanation of the reasons for a change in the company's external auditors. At a minimum, this disclosure should be contained in the same Securities and Exchange Commission (SEC) filing that companies are required to submit within four days of an auditor change.

2.13 Charitable and Political Contributions

2.13a Board Monitoring, Assessment and Approval: The board of directors should monitor, assess and approve all charitable and political contributions (including trade association contributions) made by the company. The board should only approve contributions that are consistent with the interests of the company and its shareowners. The terms and conditions of such contributions should be clearly defined and approved by the board.

2.13b Disclosure: The board should develop and disclose publicly its guidelines for approving charitable and political contributions. The board should disclose on an annual basis the amounts and recipients of all monetary and non-monetary contributions made by the company during the prior fiscal year. Any expenditures earmarked for political or charitable activities that were provided to or through a third-party should be included in the report.

3. Shareowner Voting Rights

3.1 Right to Vote is Inviolate: A shareowners' right to vote is inviolate and should not be abridged.

3.2 Access to the Proxy: Companies should provide access to management proxy materials for a long-term investor or group of long-term investors owning in aggregate at least three percent of a company's voting stock, to nominate less than a majority of the directors. Eligible investors must have owned the stock for at least two years. Company proxy materials and related mailings should provide equal space and equal treatment of nominations by qualifying investors.

To allow for informed voting decisions, it is essential that investors have full and accurate information about access mechanism users and their director nominees. Therefore, shareowners nominating director candidates under an access mechanism should adhere to the same SEC rules governing disclosure requirements and prohibitions on false and misleading statements that currently apply to proxy contests for board seats.

3.3 **One Share, One Vote**: Each share of common stock should have one vote. Corporations should not have classes of common stock with disparate voting rights. Authorized, unissued common shares that have voting rights to be set by the board should not be issued with unequal voting rights without shareowner approval.

3.4 **Advance Notice, Holding Requirements and Other Provisions**: Advance notice bylaws, holding requirements, disclosure rules and any other company imposed regulations on the ability of shareowners to solicit proxies beyond those required by law should not be so onerous as to deny sufficient time or otherwise make it impractical for shareowners to submit nominations or proposals and distribute supporting proxy materials.

3.5 **Confidential Voting**: All proxy votes should be confidential, with ballots counted by independent tabulators. Confidentiality should be automatic, permanent and apply to all ballot items. Rules and practices concerning the casting, counting and verifying of shareowner votes should be clearly disclosed.

3.6 **Voting Requirements**: A majority vote of common shares outstanding should be sufficient to amend company bylaws or take other action that requires or receives a shareowner vote. Supermajority votes should not be required. A majority vote of common shares outstanding should be required to approve:

- Major corporate decisions concerning the sale or pledge of corporate assets that would have a material effect on shareowner value. Such a transaction will automatically be deemed to have a material effect if the value of the assets exceeds 10 percent of the assets of the company and its subsidiaries on a consolidated basis;

- The corporation's acquisition of five percent or more of its common shares at above-market prices other than by tender offer to all shareowners;

- Poison pills;

- Abridging or limiting the rights of common shares to: (1) vote on the election or removal of directors or the timing or length of their term of office or (2) nominate directors or propose other action to be voted on by shareowners or (3) call special meetings of shareowners or take action by written consent or change the procedure for fixing the record date for such action; and

- Issuing debt to a degree that would excessively leverage the company and imperil its long-term viability.

3.7 **Broker Votes**: Uninstructed broker votes and abstentions should be counted only for purposes of a quorum.

3.8 **Bundled Voting**: Shareowners should be allowed to vote on unrelated issues separately. Individual voting issues (particularly those amending a company's charter), bylaws or anti-takeover provisions should not be bundled.

4. <u>Shareowner Meetings</u>

4.1 Selection and Notification of Meeting Time and Location: Corporations should make shareowners' expense and convenience primary criteria when selecting the time and location of shareowner meetings. Appropriate notice of shareowner meetings, including notice concerning any change in meeting date, time, place or shareowner action, should be given to shareowners in a manner and within time frames that will ensure that shareowners have a reasonable opportunity to exercise their franchise.

4.2 Shareowner Rights to Call Special Meetings: Shareowners should have the right to call special meetings.

4.3 Record Date and Ballot Item Disclosure: To promote the ability of shareowners to make informed decisions regarding whether to recall loaned shares: (1) shareowner meeting record dates should be disclosed as far in advance of the record date as possible, and (2) proxy statements should be disclosed before the record date passes whenever possible.

4.4 Timely Disclosure of Voting Results: A company should broadly and publicly disclose in a timely manner the final results of votes cast at annual and special meetings of shareowners. The information should be available via Web site announcement, press release or 8-K filing as soon as results are tabulated and certified. With the exception of extenuating circumstances, this should be completed no later than one month after the meeting. Whenever possible, a preliminary vote tally should be announced at the annual or special meeting of shareowners itself.

4.5 Election Polls: Polls should remain open at shareowner meetings until all agenda items have been discussed and shareowners have had an opportunity to ask and receive answers to questions concerning them.

4.6 Meeting Adjournment and Extension: Companies should not adjourn a meeting for the purpose of soliciting more votes to enable management to prevail on a voting item. A meeting should only be extended for compelling reasons such as vote fraud, problems with the voting process or lack of a quorum.

4.7 Electronic Meetings: Companies should hold shareowner meetings by remote communication (so-called electronic or "cyber" meetings) only as a supplement to traditional in-person shareowner meetings, not as a substitute.

4.8 Director Attendance: As noted in Section 2, "The Board of Directors," all directors should attend the annual shareowners' meeting and be available, when requested by the chair, to respond directly to oral or written questions from shareowners.

5. Executive Compensation

5.1 **Introduction**: The Council believes that executive compensation is a critical and visible aspect of a company's governance. Pay decisions are one of the most direct ways for shareowners to assess the performance of the board. And they have a bottom line effect, not just in terms of dollar amounts, but also by formalizing performance goals for employees, signaling the market and affecting employee morale.

The Council endorses reasonable, appropriately structured pay-for-performance programs that reward executives for sustainable, superior performance over the long-term, consistent with a company's investment horizon. "Long-term" is generally considered to be five or more years for mature companies and at least three years for other companies. While the Council believes that executives should be well paid for superior performance, it also believes that executives should not be excessively paid. It is the job of the board of directors and the compensation committee specifically to ensure that executive compensation programs are effective, reasonable and rational with respect to critical factors such as company performance, industry considerations and compensation paid to other employees.

It is also the job of the compensation committee to ensure that elements of compensation packages are appropriately structured to enhance the company's short- and long-term strategic goals and to retain and motivate executives to achieve those strategic goals. Compensation programs should not be driven by competitive surveys, which have become excessive and subject to abuse. It is shareowners, not executives, whose money is at risk.

Since executive compensation must be tailored to meet unique company needs and situations, compensation programs must always be structured on a company-by-company basis. However, certain principles should apply to all companies.

5.2 **Advisory Shareowner Votes on Executive Pay**: All companies should provide annually for advisory shareowner votes on the compensation of senior executives.

5.3 **Gross-ups**: Senior executives should not receive gross-ups beyond those provided to all the company's employees.

5.4 Shareowner Approval of Equity-based Compensation Plans: Current listing standards require shareowner approval of equity-based compensation plans and material amendments to plans (with limited exceptions). The Council strongly supports this concept and advocates that companies adopt conservative interpretations of approval requirements when confronted with choices. (For example, this may include material amendments to the plan.)

5.5 Role of Compensation Committee: The compensation committee is responsible for structuring executive pay and evaluating executive performance within the context of the pay structure of the entire company, subject to approval of the board of directors. To best handle this role, compensation committees should adopt the following principles and practices:

5.5a Committee Composition: All members of the compensation committee should be independent. Committee membership should rotate periodically among the board's independent directors. Members should be or take responsibility to become knowledgeable about compensation and related issues. They should exercise due diligence and independent judgment in carrying out their committee responsibilities. They should represent diverse backgrounds and professional experiences.

5.5b Executive Pay Philosophy: The compensation philosophy should be clearly disclosed to shareowners in annual proxy statements. In developing, approving and monitoring the executive pay philosophy, the compensation committee should consider the full range of pay components, including structure of programs, desired mix of cash and equity awards, goals for distribution of awards throughout the company, the relationship of executive pay to the pay of other employees, use of employment contracts and policy regarding dilution.

5.5c Oversight: The compensation committee should vigorously oversee all aspects of executive compensation for a group composed of the CEO and other highly paid executives, as required by law, and any other highly paid employees, including executives of subsidiaries, special purpose entities and other affiliates, as determined by the compensation committee. The committee should ensure that the structure of employee compensation throughout the company is fair, non-discriminatory and forward-looking, and that it motivates, recruits and retains a workforce capable of meeting the company's strategic objectives. To perform its oversight duties, the committee should approve, comply with and fully disclose a charter detailing its responsibilities.

5.5d Pay for Performance: Compensation of the executive oversight group should be driven predominantly by performance. The compensation committee should establish performance measures for executive compensation that are agreed to ahead of time and publicly disclosed. Performance measures applicable to all performance-based awards (including annual and long-term incentive compensation) should reward superior performance—based predominantly on measures that drive long-term value creation—at minimum reasonable cost. Such measures should also reflect downside risk. The compensation committee should ensure that key performance metrics cannot be manipulated easily.

5.5e Annual Approval and Review: Each year, the compensation committee should review performance of individuals in the oversight group and approve any bonus, severance, equity-based award or extraordinary payment made to them. The committee should understand all components of executive compensation and annually review total compensation potentially payable to the oversight group under all possible scenarios, including death/disability, retirement, voluntary termination, termination with and without cause and changes of control. The committee should also ensure that the structure of pay at different levels (CEO and others in the oversight group, other executives and nonexecutive employees) is fair and appropriate in the context of broader company policies and goals and fully justified and explained.

5.5f **Committee Accountability**: In addition to attending all annual and special shareowner meetings, committee members should be available to respond directly to questions about executive compensation; the chair of the committee should take the lead. In addition, the committee should regularly report on its activities to the independent directors of the board, who should review and ratify committee decisions. Committee members should take an active role in preparing the compensation committee report contained in the annual proxy materials, and be responsible for the contents of that report.

5.5g **Outside Advice**: The compensation committee should retain and fire outside experts, including consultants, legal advisers and any other advisers when it deems appropriate, including when negotiating contracts with executives. Individual compensation advisers and their firms should be independent of the client company, its executives and directors and should report solely to the compensation committee. The compensation committee should develop and disclose a formal policy on compensation adviser independence. In addition, the committee should annually disclose an assessment of its advisers' independence, along with a description of the nature and dollar amounts of services commissioned from the advisers and their firms by the client company's management. Companies should not agree to indemnify or limit the liability of compensation advisers or the advisers' firms.

5.5h **Clawbacks**: The compensation committee should develop and disclose a policy for reviewing unearned bonus and incentive payments that were awarded to executive officers owing to fraud, financial results that require restatement or some other cause. The policy should require recovery or cancellation of any unearned awards to the extent that it is feasible and practical to do so.

5.5i **Disclosure Practices**: The compensation committee is responsible for ensuring that all aspects of executive compensation are clearly, comprehensively and promptly disclosed, in plain English, in the annual proxy statement regardless of whether such disclosure is required by current rules and regulations. The compensation committee should disclose all information necessary for shareowners to understand how and how much executives are paid and how such pay fits within the overall pay structure of the company. It should provide annual proxy statement disclosure of the committee's compensation decisions with respect to salary, short-term incentive compensation, long-term incentive compensation and all other aspects of executive compensation, including the relative weights assigned to each component of total compensation.

The compensation committee should commit to provide full descriptions of the qualitative and quantitative performance measures and benchmarks used to determine compensation, including the weightings of each measure. At the beginning of a period, the compensation committee should calculate and disclose the maximum compensation payable if all performance-related targets are met. At the end of the performance cycle, the compensation committee should disclose actual targets and details on final payouts. Companies should provide forward-looking disclosure of performance targets whenever possible. Other recommended disclosures relevant to specific elements of executive compensation are detailed below.

5.5j **Benchmarking**: Benchmarking at median or higher levels is a primary contributor to escalating executive compensation. Although benchmarking can be a constructive tool for formulating executive compensation packages, it should not be relied on exclusively. If benchmarking is used, compensation committees should commit to annual disclosure of the companies in peer groups used for benchmarking and/or other comparisons. If the peer group used for compensation purposes differs from that used to compare overall performance, such as the five-year stock return graph required in the annual proxy materials, the compensation committee should describe the differences between the groups and the rationale for choosing between them. In addition to disclosing names of companies used for benchmarking and comparisons, the compensation committee should disclose targets for each compensation element relative to the peer/benchmarking group and year-to-year changes in companies composing peer/benchmark groups.

5.6 **Salary**

5.6a **Salary Level**: Since salary is one of the few components of executive compensation that is not "at risk," it should be set at a level that yields the highest value for the company at least cost. In general, salary should be set to reflect responsibilities, tenure and past performance, and to be tax efficient—meaning no more than $1 million.

5.6b **Above-median Salary**: The compensation committee should publicly disclose its rationale for paying salaries above the median of the peer group.

5.7 **Annual Incentive Compensation:** Cash incentive compensation plans should be structured to align executive interests with company goals and objectives. They should also reasonably reward superior performance that meets or exceeds well-defined and clearly disclosed performance targets that reinforce long-term strategic goals that were written and approved by the board in advance of the performance cycle.

5.7a **Formula Plans**: The compensation committee should approve formulaic bonus plans containing specific qualitative and quantitative performance-based operational measures designed to reward executives for superior performance related to operational/strategic/other goals set by the board. Such awards should be capped at a reasonable maximum level. These caps should not be calculated as percentages of accounting or other financial measures (such as revenue, operating income or net profit), since these figures may change dramatically due to mergers, acquisitions and other non-performance-related strategic or accounting decisions.

5.7b **Targets**: When setting performance goals for "target" bonuses, the compensation committee should set performance levels below which no bonuses would be paid and above which bonuses would be capped.

5.7c **Changing Targets**: Except in extraordinary situations, the compensation committee should not "lower the bar" by changing performance targets in the middle of bonus cycles. If the committee decides that changes in performance targets are warranted in the middle of a performance cycle, it should disclose the reasons for the change and details of the initial targets and adjusted targets.

5.8 **Long-term Incentive Compensation**: Long-term incentive compensation, generally in the form of equity-based awards, can be structured to achieve a variety of long-term objectives, including retaining executives, aligning executives' financial interests with the interests of shareowners and rewarding the achievement of long-term specified strategic goals of the company and/or the superior performance of company stock.

But poorly structured awards permit excessive or abusive pay that is detrimental to the company and to shareowners. To maximize effectiveness and efficiency, compensation committees should carefully evaluate the costs and benefits of long-term incentive compensation, ensure that long-term compensation is appropriately structured and consider whether performance and incentive objectives would be enhanced if awards were distributed throughout the company, not simply to top executives.

Companies may rely on a myriad of long-term incentive vehicles to achieve a variety of long-term objectives, including performance-based restricted stock/units, phantom shares, stock units and stock options. While the technical underpinnings of long-term incentive awards may differ, the following principles and practices apply to all long-term incentive compensation awards. And, as detailed below, certain policies are relevant to specific types of long-term incentive awards.

5.8a **Size of Awards**: Compensation committees should set appropriate limits on the size of long-term incentive awards granted to executives. So-called "mega-awards" or outsized awards should be avoided, except in extraordinary circumstances, because they can be disproportionate to performance.

5.8b **Vesting Requirements**: All long-term incentive awards should have meaningful performance periods and/or cliff vesting requirements that are consistent with the company's investment horizon but not less than three years, followed by pro rata vesting over at least two subsequent years for senior executives.

5.8c **Grant Timing**: Except in extraordinary circumstances, such as a permanent change in performance cycles, long-term incentive awards should be granted at the same time each year. Companies should not coordinate stock award grants with the release of material non-public information. The grants should occur whether recently publicized information is positive or negative, and stock options should never be backdated.

5.8d **Hedging**: Compensation committees should prohibit executives and directors from hedging (by buying puts and selling calls or employing other risk-minimizing techniques) equity-based awards granted as long-term incentive compensation or other stock holdings in the company. And they should strongly discourage other employees from hedging their holdings in company stock.

5.8e **Philosophy/Strategy**: Compensation committees should have a well-articulated philosophy and strategy for long-term incentive compensation that is fully and clearly disclosed in the annual proxy statement.

5.8f **Award Specifics**: Compensation committees should disclose the size, distribution, vesting requirements, other performance criteria and grant timing of each type of long-term incentive award granted to the executive oversight group. Compensation committees also should explain how each component contributes to the company's long-term performance objectives.

5.8g **Ownership Targets**: Compensation committees should disclose whether and how long-term incentive compensation may be used to satisfy meaningful stock ownership requirements. Disclosure should include any post-exercise holding periods or other requirements to ensure that long-term incentive compensation is used appropriately to meet ownership targets.

5.8h **Expiration Dates**: Compensation plans should have expiration dates and not be structured as "evergreen," rolling plans.

5.9 **Dilution**: Dilution measures how much the additional issuance of stock may reduce existing shareowners' stake in a company. Dilution is particularly relevant for long-term incentive compensation plans since these programs essentially issue stock at below-market prices to the recipients. The potential dilution represented by long-term incentive compensation plans is a direct cost to shareowners.

Dilution from long-term incentive compensation plans may be evaluated using a variety of techniques including the reduction in earnings per share and voting power resulting from the increase in outstanding shares.

5.9a **Philosophy/Strategy**: Compensation committees should develop and disclose the philosophy regarding dilution including definition(s) of dilution, peer group comparisons and specific targets for annual awards and total potential dilution represented by equity compensation programs for the current year and expected for the subsequent four years.

5.9b **Stock Repurchase Programs**: Stock buyback decisions are a capital allocation decision and should not be driven solely for the purpose of minimizing dilution from equity-based compensation plans. The compensation committee should provide information about stock repurchase programs and the extent to which such programs are used to minimize the dilution of equity-based compensation plans.

5.9c **Tabular Disclosure**: The annual proxy statement should include a table detailing the overhang represented by unexercised options and shares available for award and a discussion of the impact of the awards on earnings per share.

5.10 **Stock Option Awards**: Stock options give holders the right, but not the obligation, to buy stock in the future. Options may be structured in a variety of ways. Some structures and policies are preferable because they more effectively ensure that executives are compensated for superior performance. Other structures and policies are inappropriate and should be prohibited.

5.10a **Performance Options**: Stock options should be: (1) indexed to peer groups or (2) premium-priced and/or (3) vest on achievement of specific performance targets that are based on challenging quantitative goals.

5.10b **Dividend Equivalents**: To ensure that executives are neutral between dividends and stock price appreciation, dividend equivalents should be granted with stock options, but distributed only upon exercise of the option.

5.10c **Discount Options**: Discount options should not be awarded.

5.10d **Reload Options**: Reload options should be prohibited.

5.10e **Option Repricing**: "Underwater" options should not be repriced or replaced (either with new options or other equity awards), unless approved by shareowners. Repricing programs, with shareowner approval, should exclude directors and executives, restart vesting periods and mandate value-for-value exchanges in which options are exchanged for a number of equivalently valued options/shares.

5.11 **Stock Awards/Units**: Stock awards/units and similar equity-based vehicles generally grant holders stock based on the attainment of performance goals and/or tenure requirements. These types of awards are more expensive to the company than options, since holders generally are not required to pay to receive the underlying stock, and therefore should be limited in size.

Stock awards should be linked to the attainment of specified performance goals and in some cases to additional time-vesting requirements. Stock awards should not be payable based solely on the attainment of tenure requirements.

5.12 Perquisites: Company perquisites blur the line between personal and business expenses. Executives, not companies, should be responsible for paying personal expenses—particularly those that average employees routinely shoulder, such as family and personal travel, financial planning, club memberships and other dues. The compensation committee should ensure that any perquisites are warranted and have a legitimate business purpose, and it should consider capping all perquisites at a *de minimis* level. Total perquisites should be described, disclosed and valued.

5.13 Employment Contracts, Severance and Change-of-control Payments: Various arrangements may be negotiated to outline terms and conditions for employment and to provide special payments following certain events, such as a termination of employment with/without cause and/or a change in control. The Council believes that these arrangements should be used on a limited basis.

5.13a Employment Contracts: Companies should only provide employment contracts to executives in limited circumstances, such as to provide modest, short-term employment security to a newly hired or recently promoted executive. Such contracts should have a specified termination date (not to exceed three years); contracts should not be "rolling" on an open-ended basis.

5.13b Severance Payments: Executives should not be entitled to severance payments in the event of termination for poor performance, resignation under pressure or failure to renew an employment contract. Company payments awarded upon death or disability should be limited to compensation already earned or vested.

5.13c Change-in-control Payments: Any provisions providing for compensation following a change-in-control event should be "double-triggered." That is, such provisions should stipulate that compensation is payable only: (1) after a control change actually takes place and (2) if a covered executive's job is terminated because of the control change.

5.13d Transparency: The compensation committee should fully and clearly describe the terms and conditions of employment contracts and any other agreements/arrangements covering the executive oversight group and reasons why the compensation committee believes the agreements are in the best interests of shareowners.

5.13e Timely Disclosure: New executive employment contracts or amendments to existing contracts should be immediately disclosed in 8-K filings and promptly disclosed in subsequent 10-Qs.

5.13f Shareowner Ratification: Shareowners should ratify all employment contracts, side letters or other agreements providing for severance, change-in-control or other special payments to executives exceeding 2.99 times average annual salary plus annual bonus for the previous three years.

5.14 Retirement Arrangements: Deferred compensation plans, supplemental executive retirement plans, retirement packages and other retirement arrangements for highly paid executives can result in hidden and excessive benefits. Special retirement arrangements—including those structured to permit employees whose compensation exceeds Internal Revenue Service (IRS) limits to fully participate in similar plans covering other employees—should be consistent with programs offered to the general workforce, and they should be reasonable.

5.14a Supplemental Executive Retirement Plans (SERPs): Supplemental plans should be an extension of the retirement program covering other employees. They should not include special provisions that are not offered under plans covering other employees, such as above-market interest rates and excess service credits. Payments such as stock and stock options, annual/long-term bonuses and other compensation not awarded to other employees and/or not considered in the determination of retirement benefits payable to other employees should not be considered in calculating benefits payable under SERPs.

5.14b **Deferred Compensation Plans**: Investment alternatives offered under deferred compensation plans for executives should mirror those offered to employees in broad-based deferral plans. Above-market returns should not be applied to executive deferrals, nor should executives receive "sweeteners" for deferring cash payments into company stock.

5.14c **Post-retirement Exercise Periods**: Executives should be limited to three-year post-retirement exercise periods for stock option grants.

5.14d **Retirement Benefits**: Executives should not be entitled to special perquisites—such as apartments, automobiles, use of corporate aircraft, security, financial planning—and other benefits upon retirement. Executives are highly compensated employees who should be more than able to cover the costs of their retirement.

5.15 Stock Ownership

5.15a **Ownership Requirements**: Executives and directors should own, after a reasonable period of time, a meaningful position in the company's common stock. Executives should be required to own stock—excluding unexercised options and unvested stock awards—equal to a multiple of salary. The multiple should be scaled based on position, such as two times salary for lower-level executives and up to six times salary for the CEO.

5.15b **Stock Sales**: Executives should be required to sell stock through pre-announced 10b5-1 program sales or by providing a minimum 30-day advance notice of any stock sales. 10b5-1 program adoptions, amendments, terminations and transactions should be disclosed immediately, and boards of companies using 10b5-1 plans should: (1) adopt policies covering plan practices, (2) periodically monitor plan transactions and (3) ensure that company policies discuss plan use in the context of guidelines or requirements on equity hedging, holding and ownership.

5.15c **Post-retirement Holdings**: Executives should be required to continue to satisfy the minimum stock holding requirements for at least six months after leaving the company.

5.15d **Transparency**: Companies should disclose stock ownership requirements and whether any members of the executive oversight group are not in compliance.

6. Director Compensation

6.8 Employment Contracts, Severance and Change-of-control Payments
6.9 Retirement Arrangements
6.10 Disgorgement

6.1 Introduction: Given the vital importance of their responsibilities, non-employee directors should expect to devote significant time to their boardroom duties.

Policy issues related to director compensation are fundamentally different from executive compensation. Director compensation policies should accomplish the following goals: (1) attract highly qualified candidates, (2) retain highly qualified directors, (3) align directors' interests with those of the long-term owners of the corporation and (4) provide complete disclosure to shareowners regarding all components of director compensation including the philosophy behind the program and all forms of compensation.

To accomplish these goals, director compensation should consist solely of a combination of cash retainer and equity-based compensation. The cornerstone of director compensation programs should be alignment of interests through the attainment of significant equity holdings in the company meaningful to each individual director. The Council believes that equity obtained with an individual's own capital provides the best alignment of interests with other shareowners. However, compensation plans can provide supplemental means of obtaining long-term equity holdings through equity compensation, long-term holding requirements and ownership requirements.

Companies should have flexibility within certain broad policy parameters to design and implement director compensation plans that suit their unique circumstances. To support this flexibility, investors must have complete and clear disclosure of both the philosophy behind the compensation plan as well as the actual compensation awarded under the plan. Without full disclosure, it is difficult to earn investors' confidence and support for director and executive compensation plans.

Although non-employee director compensation is generally immaterial to a company's bottom line and small relative to executive pay, director compensation is an important piece of a company's governance. Because director pay is set by the board and has inherent conflicts of interest, care must be taken to ensure there is no appearance of impropriety. Companies should pay particular attention to managing these conflicts.

6.2 Role of the Compensation Committee in Director Compensation: The compensation committee (or alternative committee comprised solely of independent directors) is responsible for structuring director pay, subject to approval of all the independent directors, so that it is aligned with the long-term interests of shareowners. Because directors set their own compensation, the following practices should be emphasized:

6.2a Total Compensation Review: The compensation committee should understand and value each component of director compensation and annually review total compensation potentially payable to each director.

6.2b Outside Advice: Committees should have the ability to hire a compensation consultant for assistance on director compensation plans. In cases where the compensation committee does use a consultant, it should always retain an independent compensation consultant or other advisers it deems appropriate to assist with the evaluation of the structure and value of director compensation. A summary of the pay consultant's advice should be provided in the annual proxy statement in plain English. The compensation committee should disclose all instances where the consultant is also retained by the committee to provide advice on executive compensation.

6.2c **Compensation Committee Report**: The annual director compensation disclosure included in the proxy materials should include a discussion of the philosophy for director pay and the processes for setting director pay levels. Reasons for changes in director pay programs should be explained in plain English. Peer group(s) used to compare director pay packages should be fully disclosed, along with differences, if any, from the peer group(s) used for executive pay purposes. While peer analysis can be valuable, peer-relative justification should not dominate the rationale for (higher) pay levels. Rather, compensation programs should be appropriate for the circumstances of the company. The report should disclose how many committee meetings involved discussions of director pay.

6.3 Retainer

6.3a **Amount of Annual Retainer**: The annual retainer should be the sole form of cash compensation paid to non-employee directors. Ideally, it should reflect an amount appropriate for a director's expected duties, including attending meetings, preparing for meetings/discussions and performing due diligence on sites/operations (which should include routine communications with a broad group of employees). In some combination, the retainer and the equity component also reflect the director's contribution from experience and leadership. Retainer amounts may be differentiated to recognize that certain non-employee directors—possibly including independent board chairs, independent lead directors, committee chairs or members of certain committees—are expected to spend more time on board duties than other directors.

6.3b **Meeting Attendance Fees**: Directors should not receive any meeting attendance fees since attending meetings is the most basic duty of a non-employee director.

6.3c **Director Attendance Policy**: The board should have a clearly defined attendance policy. If the committee imposes financial consequences (loss of a portion of the retainer or equity) for missing meetings as part of the director compensation program, this should be fully disclosed. Financial consequences for poor attendance, while perhaps appropriate in some circumstances, should not be considered in lieu of examining the attendance record, commitment (time spent on director duties) and contribution in any review of director performance and in re-nomination decisions.

6.4 **Equity-based Compensation**: Equity-based compensation can be an important component of director compensation. These tools are perhaps best suited to instill optimal long-term perspective and alignment of interests with shareowners. To accomplish this objective, director compensation should contain an ownership requirement or incentive and minimum holding period requirements.

6.4a **Vesting of Equity-based Awards**: To complement the annual retainer and align director-shareowner interests, non-employee directors should receive stock awards or stock-related awards such as phantom stock or share units. Equity-based compensation to non-employee directors should be fully vested on the grant date. This point is a marked difference to the Council's policy on executive compensation, which calls for performance-based vesting of equity-based awards. While views on this topic are mixed, the Council believes that the benefits of immediate vesting outweigh the complications. The main benefits are the immediate alignment of interests with shareowners and the fostering of independence and objectivity for the director.

6.4b Ownership Requirements: Ownership requirements should be at least three to five times annual compensation. However, some qualified director candidates may not have financial means to meet immediate ownership thresholds. For this reason, companies may set either a minimum threshold for ownership or offer an incentive to build ownership. This concept should be an integral component of the committee's disclosure related to the philosophy of director pay. It is appropriate to provide a reasonable period of time for directors to meet ownership requirements or guidelines.

6.4c Holding Periods: Separate from ownership requirements, the Council believes companies should adopt holding requirements for a significant majority of equity-based grants. Directors should be required to retain a significant portion (such as 80 percent) of equity grants until after they retire from the board. These policies should also prohibit the use of any transactions or arrangements that mitigate the risk or benefit of ownership to the director. Such transactions and arrangements inhibit the alignment of interests that equity compensation and ownership requirements provide.

6.4d Mix of Cash and Equity-based Compensation: Companies should have the flexibility to set and adjust the split between equity-based and cash compensation as appropriate for their circumstances. The rationale for the ratio used is an important element of disclosures related to the overall philosophy of director compensation and should be disclosed.

6.4e Transparency: The present value of equity awards paid to each director during the previous year and the philosophy and process used in determining director pay should be fully disclosed in the proxy statement.

6.4f Shareowner Approval: Current listing standards require shareowner approval of equity-based compensation plans and material amendments to plans (with limited exceptions). Companies should adopt conservative interpretations of approval requirements when confronted with choices.

6.5 Performance-based Compensation: While the Council is a strong advocate of performance-based concepts in executive compensation, we do not support performance measures in director compensation. Performance-based compensation for directors creates potential conflicts with the director's primary role as an independent representative of shareowners.

6.6 Perquisites: Directors should not receive perquisites other than those that are meeting-related, such as air-fare, hotel accommodations and modest travel/accident insurance. Health, life and other forms of insurance; matching grants to charities; financial planning; automobile allowances and other similar perquisites cross the line as benefits offered to employees. Charitable awards programs are an unnecessary benefit; directors interested in posthumous donations can do so on their own via estate planning. Infrequent token gifts of modest value are not considered perquisites.

6.7 Repricing and Exchange Programs: Under no circumstances should directors participate in or be eligible for repricing or exchange programs.

6.8 Employment Contracts, Severance and Change-of-control Payments: Non-employee directors should not be eligible to receive any change-in-control payments or severance arrangements.

6.9 Retirement Arrangements

6.9a Retirement Benefits: Since non-employee directors are elected representatives of shareowners and not company employees, they should not be offered retirement benefits, such as defined benefit plans or deferred stock awards, nor should they be entitled to special post-retirement perquisites.

6.9b **Deferred Compensation Plans**: Directors may defer cash pay via a deferred compensation plan for directors. However, such investment alternatives offered under deferred compensation plans for directors should mirror those offered to employees in broad-based deferral plans. Non-employee directors should not receive "sweeteners" for deferring cash payments into company stock.

6.10 **Disgorgement**: Directors should be required to repay compensation to the company in the event of malfeasance or a breach of fiduciary duty involving the director.

7. Independent Director Definition

7.1 Introduction
7.2 Basic Definition of an Independent Director
7.3 Guidelines for Assessing Director Independence

7.1 **Introduction**: A narrowly drawn definition of an independent director (coupled with a policy specifying that at least two-thirds of board members and all members of the audit, compensation and nominating committees should meet this standard) is in the corporation's and shareowners' financial interest because:

- Independence is critical to a properly functioning board;
- Certain clearly definable relationships pose a threat to a director's unqualified independence;
- The effect of a conflict of interest on an individual director is likely to be almost impossible to detect, either by shareowners or other board members; and
- While an across-the-board application of *any* definition to a large number of people will inevitably miscategorize a few of them, this risk is sufficiently small and is far outweighed by the significant benefits.

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. However, the independence of the director depends on all relationships the director has, including relationships between directors, that may compromise the director's objectivity and loyalty to shareowners. Directors have an obligation to consider all relevant facts and circumstances to determine whether a director should be considered independent.

7.2 **Basic Definition of an Independent Director**: An independent director is someone whose only nontrivial professional, familial or financial connection to the corporation, its chairman, CEO or any other executive officer is his or her directorship. Stated most simply, an independent director is a person whose directorship constitutes his or her only connection to the corporation.

7.3 **Guidelines for Assessing Director Independence**: The notes that follow are supplied to give added clarity and guidance in interpreting the specified relationships. A director will not be considered independent if he or she:

7.3a Is, or in the past five years has been, or whose relative is, or in the past five years has been, employed by the corporation or employed by or a director of an affiliate;

NOTES: An "affiliate" relationship is established if one entity either alone or pursuant to an arrangement with one or more other persons, owns or has the power to vote more than 20 percent of the equity interest in another, unless some other person, either alone or pursuant to an arrangement with one or more other persons, owns or has the power to vote a greater percentage of the equity interest. For these purposes, joint venture partners and general partners meet the definition of an affiliate, and officers and employees of joint venture enterprises and general partners are considered affiliated. A subsidiary is an affiliate if it is at least 20 percent owned by the corporation.

Affiliates include predecessor companies. A "predecessor" is an entity that within the last five years was party to a "merger of equals" with the corporation or represented more than 50 percent of the corporation's sales or assets when such predecessor became part of the corporation.

"Relatives" include spouses, parents, children, step-children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, aunts, uncles, nieces, nephews and first cousins, and anyone sharing the director's home.

7.3b Is, or in the past five years has been, or whose relative is, or in the past five years has been, an employee, director or greater-than-20-percent owner of a firm that is one of the corporation's or its affiliate's paid advisers or consultants or that receives revenue of at least $50,000 for being a paid adviser or consultant to an executive officer of the corporation;

NOTES: Advisers or consultants include, but are not limited to, law firms, auditors, accountants, insurance companies and commercial/investment banks. For purposes of this definition, an individual serving "of counsel" to a firm will be considered an employee of that firm.

The term "executive officer" includes the chief executive, operating, financial, legal and accounting officers of a company. This includes the president, treasurer, secretary, controller and any vice-president who is in charge of a principal business unit, division or function (such as sales, administration or finance) or performs a major policymaking function for the corporation.

7.3c Is, or in the past five years has been, or whose relative is, or in the past five years has been, employed by or has had a five percent or greater ownership interest in a third-party that provides payments to or receives payments from the corporation and either: (i) such payments account for one percent of the third-party's or one percent of the corporation's consolidated gross revenues in any single fiscal year; or (ii) if the third-party is a debtor or creditor of the corporation and the amount owed exceeds one percent of the corporation's or third party's assets. Ownership means beneficial or record ownership, not custodial ownership;

7.3d Has, or in the past five years has had, or whose relative has paid or received more than $50,000 in the past five years under, a personal contract with the corporation, an executive officer or any affiliate of the corporation;

NOTES: Council members believe that even small personal contracts, no matter how formulated, can threaten a director's complete independence. This includes any arrangement under which the director borrows or lends money to the corporation at rates better (for the director) than those available to normal customers—even if no other services from the director are specified in connection with this relationship;

7.3e Is, or in the past five years has been, or whose relative is, or in the past five years has been, an employee or director of a foundation, university or other non-profit organization that receives significant grants or endowments from the corporation, one of its affiliates or its executive officers or has been a *direct* beneficiary of *any* donations to such an organization;

NOTES: A "significant grant or endowment" is the lesser of $100,000 or one percent of total annual donations received by the organization.

7.3f Is, or in the past five years has been, or whose relative is, or in the past five years has been, part of an interlocking directorate in which the CEO or other employee of the corporation serves on the board of a third-party entity (for-profit or not-for-profit) employing the director or such relative;

7.3g Has a relative who is, or in the past five years has been, an employee, a director or a five percent or greater owner of a third-party entity that is a significant competitor of the corporation; or

7.3h Is a party to a voting trust, agreement or proxy giving his/her decision making power as a director to management except to the extent there is a fully disclosed and narrow voting arrangement such as those which are customary between venture capitalists and management regarding the venture capitalists' board seats.

The foregoing describes relationships between directors and the corporation. The Council also believes that it is important to discuss relationships between directors on the same board which may threaten either director's independence. A director's objectivity as to the best interests of the shareowners is of utmost importance and connections between directors outside the corporation may threaten such objectivity and promote inappropriate voting blocks. As a result, directors must evaluate all of their relationships with each other to determine whether the director is deemed independent. The board of directors shall investigate and evaluate such relationships using the care, skill, prudence and diligence that a prudent person acting in a like capacity would use.

(updated May 1, 2009)

Council of Institutional Investors

Testimony of
Ann Yerger
Executive Director
Council of Institutional Investors
before the
Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises
of the
United States House of Representatives Committee on Financial Services
Thursday, March 11, 2010
Corporate Governance after *Citizens United*

Attachment 4

Council Letter to Rep. Michael Capuano (D-MA)
Regarding the Shareholder Protection Act of 2010 (H.R. 4537)

Via Facsimile

February 24, 2010

The Honorable Michael E. Capuano
1414 Longworth House Office Building
Washington, DC 20515

Dear Congressman Capuano:

I am writing on behalf of the Council of Institutional Investors, a nonprofit association of public, union and corporate pension funds with combined assets that exceed $3 trillion. Council members are major, long-term investors with a duty to protect the retirement assets of millions of American workers.

As you know, the Supreme Court's recent ruling in *Citizens United v. Federal Election Commission* has raised many pressing questions regarding both public and private oversight of corporate political spending. The Council shares the fundamental principles of accountability and transparency underlying your introduction of the *Shareholder Protection Act of 2010* (H.R. 4537). Pursuant to these important principles, the Council in 2006 adopted the following policy regarding corporate charitable and political contributions:

> **Board Monitoring, Assessment and Approval:** The board of directors should monitor, assess and approve all charitable and political contributions (including trade association contributions) made by the company. The board should only approve contributions that are consistent with the interests of the company and its shareowners. The terms and conditions of such contributions should be clearly defined and approved by the board.
>
> **Disclosure:** The board should develop and disclose publicly its guidelines for approving charitable and political contributions. The board should disclose on an annual basis the amounts and recipients of all monetary and non-monetary contributions made by the company during the prior fiscal year. Any expenditures earmarked for political or charitable activities that were provided to or through a third-party should be included in the report.[1]

Robust, clear, and accessible disclosure of corporate political contributions should help investors provide oversight of corporate political spending. Nevertheless, even with disclosure, shareowner oversight will prove weak without the means to hold boards accountable for properly monitoring, assessing, and approving contributions consistent with the interest of corporate owners—investors. Shareowners accordingly need stronger tools to nominate and replace unresponsive directors. Together, majority voting for the election of directors and a measured right for investors to place their nominees on the corporate proxy would go a long way to genuine board accountability.

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[1] *CII Corporate Governance Policies*, 2.13 Charitable and Political Contributions, 6, www.cii.org/UserFiles/file/council%20policies/CII%20Full%20Corp%20Gov%20Policies%205-7-09.pdf.

Thank you for consideration of our views. We look forward to working with you to ensure proper shareowner oversight of corporate political spending. If you have any questions regarding our views, please feel free to contact me at (202) 261-7096, or jonathan@cii.org, or our General Counsel Jeff Mahoney at (202) 261-7081 or jeff@cii.org.

Sincerely,

Jeff Mahoney

Jeff Mahoney
General Counsel
Council of Institutional Investors

Cc: The Honorable Barney Frank, Chairman, House Financial Services Committee
The Honorable Spencer Bachus, Ranking Member, House Financial Services Committee
The Honorable Paul E. Kanjorski, Chairman, House Financial Services Committee Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises
The Honorable Scott Garrett, Ranking Member, House Financial Services Committee Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises

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Attachment 5

Press Release and Joint Letter from the
Council and the Center for Political Accountability ("CPA") to
427 Top Companies Urging Disclosure and Accountability in Response to *Citizens United*

February 24, 2010
For Immediate Release

Press Contacts:

Bruce Freed
President
CPA
301-233-3621
bffreed@politicalaccountability.net

Amy Borrus
Deputy Director
CII
202-261-7082
amy@cii.org

CPA-CII Write 427 Top Companies, Urge Adoption of Political Disclosure and Accountability in Response to *Citizens United*

Washington, D.C., Feb. 24, 2010 -- The Center for Political Accountability and the Council of Institutional Investors, joined by nearly 50 institutional investors and shareholder advocate groups, today launched a letter campaign to persuade companies in the Standard & Poor's 500 Index to disclose all political contributions they make with corporate funds. The letter also calls on corporate boards to approve and review all company political donations.

(A copy of the letter is available at http://www.scribd.com/doc/27388443)

Currently, 73 S&P 500 companies-including nearly half of the S&P 100-disclose and monitor corporate political spending. Companies include Hewlett-Packard, Merck, United Technologies, e-Bay, Aetna and Microsoft. The February 24 letter was sent to the chairs of 427 companies that have yet to adopt disclosure and accountability policies for political spending.

The letter campaign was spurred by the U.S. Supreme Court's January 21 ruling in Citizens United v. Federal Election Commission, which rewrote America's campaign finance rules. By removing all but a handful of restraints on corporate political spending, the ruling "poses a major challenge to companies and their shareholders," the letter warned. "It is likely to put companies under immense pressure to use shareholder funds to support candidates, groups and causes whose positions and activities could threaten a company's reputation, bottom line and shareholder value."

Disclosure could help companies resist appeals to write fat political checks. "It's imperative that companies protect themselves from the pressure to give and from ill-considered political spending," said Bruce Freed, President of the Center for Political Accountability (CPA). "That's why adopting policies and procedures for political disclosure and accountability is so important for companies and their shareholders. The companies that have done so, including nearly half of the S&P 100, have voluntarily agreed to disclose and require board oversight of their political spending with corporate funds."

The Council of Institutional Investors (CII), a leading advocate for good corporate governance, has long urged boards to disclose, monitor, assess and approve all charitable and political contributions made by their companies. "Investors need to know how their money is being spent in the political arena," said Ann Yerger, the Council's executive director. "And boards need to step up to the plate and ensure that political checks the company writes enhance, not erode, shareowner value."

In addition to the CPA and CII, the following institutional investors and shareholder advocates are among those who co-signed the Center's letter:

California Public Employees' Retirement System
New York State Common Retirement Fund
New Jersey State Investment Council
Connecticut State Treasurer
Trillium Asset Management
Domini Social Investment
Walden Asset Management
Green Century Capital Management
Newground Social Investment
Nathan Cummings Foundation
Social Investment Forum
Sheet Metal Workers' National Pension Fund
International Brotherhood of Teamsters
Amalgamated Bank
Mercy Investment Program

ABOUT THE CENTER FOR POLITICAL ACCOUNTABILITY
The Center for Political Accountability (www.politicalaccountability.net) is a nonprofit, nonpartisan advocacy group whose mission is to bring transparency and accountability to corporate political spending.

ABOUT THE COUNCIL OF INSTITUTIONAL INVESTORS
The Council of Institutional Investors (www.cii.org) is a nonprofit association or public, union and corporate pension funds with combined assets that exceed $3 trillion. Member funds are major long-term shareowners with a duty to protect the retirement assets of millions of American workers. The Council strives to educate its members, policymakers and the public about good corporate governance, shareowner rights and related investment issues and to advocate on members' behalf.

February 24, 2010

«salutation» «Chairman_first» «middle_» «last»
«Title»
«Constituent_Name»
«MA_line_1»
«MA_Line_2»
«MA_Line_3»

Dear «salutation» «last»:

We are writing to urge your company to commit to disclosure and board oversight of all its political spending with corporate funds. As you know, the U.S. Supreme Court's recent decision in *Citizens United v. the Federal Election Commission,* removes all but a handful of restraints on corporate political spending. The ruling poses a major challenge to companies and their shareowners. It is likely to put companies under immense pressure to use shareholder funds to support candidates, groups and causes whose positions and activities could threaten a company's reputation, bottom line and shareholder value.

We hope you will join the 73 major companies that have already agreed to adopt political disclosure and accountability policies. The list includes nearly half of S&P 100 firms, such as Hewlett-Packard, Merck and United Technologies.

Best practices in corporate political disclosure and accountability include:

- policies and procedures for board approval and review of corporate political spending, and
- annual public disclosure of all corporate political expenditures, including contributions made with corporate funds and payments to trade associations and other tax-exempt organizations that are used for political purposes.

Over the past decade, support for political disclosure has increased steadily among companies, shareholders, corporate directors and proxy advisory services. A 2008 Mason-Dixon Polling & Research survey of directors, commissioned by the Center for Political Accountability (CPA), found that two-thirds said corporate scandals involving political activities have "damaged the public's confidence and trust in corporate America." A similar majority (60 percent) agreed that reforms were necessary to "protect companies from risk." A 2006 Mason-Dixon poll of shareholders found that more than 90 percent backed more disclosure and 84 percent wanted board oversight and approval of political giving.

Shareowners in growing numbers support proxy resolutions calling for disclosure of corporate political contributions. Proxy voting advisory firms RiskMetrics, Proxy Governance and Glass Lewis recognize the importance of political giving disclosure and accountability, and in most cases support proxy proposals that promote those goals. The Council of Institutional Investors calls on boards to monitor, assess and approve all company political contributions, and to develop and disclose publicly, on an annual basis, the amounts and recipients of all monetary and non-monetary contributions.

Please look to the Center of Political Accountability as a resource when developing your policies on political spending, and contact Bruce Freed, CPA President, with any questions, at bffreed@politicalaccountability.net or (202) 464-1570 x 102.

Sincerely,

Bruce F. Freed
President
Center for Political Accountability

Ann Yerger
Executive Director
Council of Institutional Investors

Thomas P. DiNapoli
New York State Comptroller
New York State Common Retirement Fund

Anne Simpson
Senior Portfolio Manager
California Public Employees' Retirement System

Orin S. Kramer
Chair
New Jersey State Investment Council

Denise L. Nappier
Connecticut State Treasurer

Shelley Alpern
Social Research and Advocacy Director
Trillium Asset Management Corporation

Timothy Smith
Senior Vice President
Walden Asset Management

Bruce Herbert
Chief Executive
Newground Social Investment

Adam Kanzer
Managing Director & General Counsel
Domini Social Investments

Kristina Curtis
Vice President
Green Century Capital Management, Inc

Lance E. Lindblom
President & CEO
The Nathan Cummings Foundation

Bennett Freeman
Senior Vice President
Sustainability Research and Policy
Calvert Asset Management Company, Inc.

Robert Zevin
President
Robert Brooke Zevin Associates, Inc.

Lisa Woll
Chief Financial Officer
Social Investment Forum

Leslie Christian
President & CEO
Portfolio 21 Investments

C. Thomas Keegel
General Secretary-Treasurer
International Brotherhood of Teamsters

Mary Ellen Gondeck
Congregation of St. Joseph
Office of Peace and Justice

Scott Zdrazil
Director of Social Responsibility
Amalgamated Bank

Stephen Viederman
Finance Committee
Christopher Reynolds Foundation

Ruth Kuhn, SC
Sisters of Charity of Cincinnati
Corporate Responsibility Committee,
Coordinator, Region VI
Coalition for Responsible Investment

Shane G. Johnston, AIF®
Accredited Investment Fiduciary
Blue Summit Financial Group, Inc.

Reverend Séamus P. Finn
Missionary Oblates of Mary Immaculate

James McRitchie, Publisher
CorpGov.net (Corporate Governance)

Peter W. Krull
President
Krull & Company

Conrad MacKerron
Director, CSR Program
As You Sow Foundation

Susan Vickers
Vice President Community Health
Catholic Healthcare West

Lauren Compere
Director of Shareholder Advocacy
Boston Common Asset Management

Valerie Heinoinen, o.s.u
Consultant, Corporate Social Responsibility
Dominican Sisters of Hope
Mercy Investment Program
Sisters of Mercy-Detroit Charitable Trust
Ursuline Sisters of Tildonk, U.S. Province

Kathryn McCloskey
Director, Corporate Social Responsibility
United Church Funds
Director, Corporate Social Responsiblity
Pension Boards,
United Church of Christ, Inc.

Elizabeth E. McGeveran
Senior Vice President, Governance
& Sustainable Investment
F&C Management Ltd.

George Gay
Chief Executive Officer
First Affirmative Financial Network

Myles McCabe
Director of Peace and Justice
Marianist Province of the U.S.

Catherine Rowan
Corporate Responsibility
Coordinator
Maryknoll Sisters

Joanne Dowdell
SVP, Director of Corporate Responsibility
Sentinel Financial Services Company

Julie Fox Gorte, Ph.D
Senior Vice President
for Sustainable Investing
PaxWorld LLC

Susan Makos
First Vice President
Mercy Investment Services, Inc.

Colin Melvin
Chief Executive
Hermes Equity Ownership Services L.P.

Patrick J. O'Neill
Executive Vice President
Director, Organizing Department
UFCW International Union

Abigail Herron
Corporate Governance Manager
Responsible Investment Team
The Co-operative Asset Management

Rian Fried
President
Clean Yield Asset Management

Judy Byron, OP
Director
Northwest Coalition for Responsible Investment

Bob Walker
VP Sustainability
Northwest & Ethical Investments

Kenneth Colombo
Fund Coordinator
Sheet Metal Workers' National Pension Fund

Andrew Shapiro
President
Lawndale Capital Management, LLC

Constance Brookes
Executive Director
Friends Fiduciary Corporation