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Honorable Mary Schapiro, Chairman
Securities & Exchange Commission
100 F Street NE
Washington DC 20549

Re: **Unreliability of US Chamber of Commerce Study on Shareholder Proposals**

Dear Ms. Schapiro:

We are writing to express our concern about reliability of the conclusions drawn by an Analysis of the Wealth Effects of Shareholder Proposals (the "Report") that was done by Navigant Consulting for the US Chamber of Commerce and publicly disseminated in May 2009. As major investors in the US markets, with aggregate total assets of $1.2 trillion under management, we believe it is important that policymakers and regulators be made aware of critical shortcomings in the Report.

From our viewpoint as global investors, we have seen the tangible benefits of active ownership. At both private and public companies, shareholders play a key role in effective corporate governance. In fact, all of the undersigned institutional investors serve as fiduciaries pursuant to legal standards that require us to actively monitor portfolio holdings and manage our legal rights associated with share ownership. The ability of shareholders to communicate with directors, as their elected board representatives, is critical to good governance and shareholder value. At public companies, shareholder resolutions are an essential part of this communication process.

We question reliability of the Report and would particularly like to draw your attention to a number of considerations that it overlooked:

- ***Shareholder risk:*** Investment management decisions are typically made (and should be analyzed) on a "risk-adjusted" basis. Many shareholder resolutions relate primarily to long-term risks that might not be manifested in company financial performance numbers over the three-year, or shorter, time periods that were examined in the Report. This is a major analytical shortcoming.

  The Report simply does not discuss how shareholder resolutions relate to shareholder value risks. From the midst of a worldwide economic crisis that was brought on in part by inattention to long-term risk, it is clear that such risks should not be overlooked. We see the Report's failure to use a risk-adjusted approach as raising serious questions about reliability of its conclusions. The same flaw appears to be common to many of the other studies cited in the Report.

- ***Presumed causal relationship:*** The Report fails to adequately analyze cause and effect in the data. For example, the authors conclude that they found "some indication of a long-run decrease in market value for the firms in our sample." However, it appears that many (perhaps most) of the companies in their sample actively opposed and failed to implement changes sought by the shareholder resolutions. The Report does not address whether any decreases in value might just as well have been caused by the added visibility to underlying company risk issues that were highlighted by the resolutions. Also, any decreases in value could have been caused by future risk implications for share price from the company's opposition to or failure to implement the resolutions. Indeed, any decline in value might merely be indicative of the shareholder resolution proponents' skill in selecting companies for engagement that were poorly managed. The authors seem eager to jump to their conclusions without eliminating alternative causal relationships.

- ***Unreliable cost data:*** We consider the data on costs of shareholder resolutions cited in the Report to be highly suspect. It is based on relatively small, self-selected samples, where the averages appear to be skewed by a few high outliers. The footnotes even recognize that this cost data may also include other expenses. Furthermore, by using average rather than median costs, the numbers became three to five times higher.

  The cost analysis used in the Report also illustrates, but fails to recognize, a number of agency risk issues. For example, much is said about costs that boards and management choose to impose on companies in an effort to avoid learning views of the company's owners. Given the advisory nature of almost all shareholder resolutions, this raises more questions about whether decisions to incur such costs are an appropriate expenditure of corporate funds than it does about inherent costs of the shareholder resolution process.

- ***Added information benefits:*** The benefits of information flow associated with votes on shareholder resolutions are completely ignored by the Report. Enhanced communication between shareholders and directors, as well as the unfiltered results conveyed directly to the boardroom by shareholder votes, are unique advantages of the shareholder resolution process. The apparent fact that some managers and directors might not want to receive information that is inconsistent with their own views makes shareholder votes an even more valuable communication tool.

  Ultimately, shareholders depend on fully-informed discussion and debate within the boardroom to protect their interests. Even low shareholder support for a resolution conveys important information, and upward-trending shareholder votes over time send a critical signal. (For example, according to RiskMetrics, shareholder votes in favor of independent board chairs have gone from 24% in 2005 to more than 37% last year and received majority votes at four companies this year.) However, the Report accords no worth to this information, which we view as a major oversight.

We would also like to emphasize the role that shareholder votes can play in facilitating corporate governance improvements without shareholder resort to costly change in control challenges or widespread sale of a mismanaged company's stock. In markets where many shareholders are passively exposed to companies through index funds, shareholder resolutions offer the most efficient means of influencing needed change.

- ***Opposing studies not mentioned:*** Academic studies which reached opposite conclusions about added value of the shareholder resolution process are not cited in the Report. We list a few that involved substantially larger sample data sets to illustrate the limited utility of the Report:

    - In *"A Comparative Analysis of Shareholder Activism in the US and UK: Evidence from Shareholder Proposals,"* presented by Professors Bonnie Buchanan and Tina Yang at the European Financial Management Symposium held at the University of Cambridge in April 2009, a sample of 1,828 shareholder resolutions from 529 US firms between 2000 and 2006 was evaluated. The researchers found that US companies receiving shareholder proposals underperformed their peers by 5% in the year prior to the proposal but closed the gap and outperformed their peers over the three-year period after the shareholder resolution.

    - Professors Luc Renneboog and Peter Szilagyi, in their analysis of 2,800 US proxy proposals, which was published in 2008 as *"Shareholder Activism Through the Proxy Process,"* concluded that "shareholder proposals should be regarded as a useful means of resolving agency concerns and the proposal sponsors as valuable monitoring agents." They found that resolutions are carefully targeted at companies with underperformance, poor governance structures, ineffective boards and CEO compensation that is insensitive to performance. They also found significantly positive stock price reaction to proposal announcements.

    - In a March 2008 Harvard Business School Working Paper Series, *"Board of Directors Responsiveness to Shareholders: Evidence from Shareholder Proposals,"* Professors Yonca Ertimur, Fabrizio Ferri and Stephen Stubben reviewed 620 advisory shareholder proposals that received majority shareholder votes between 1997 and 2004. They found that, at companies which implemented shareholder-approved resolutions, outside directors were less likely to lose their seats than directors at unresponsive companies. Thus, shareholder resolution vote outcomes were confirmed to be a valuable information resource for directors who would like to retain their seats.

As you can see, the Report paints a distorted image of the role that shareholder resolutions play in corporate governance and their importance to both long-term risk management and investment performance. We hope this letter will help balance the public record as you consider policy and regulatory initiatives.

Please let us know if you have any questions or would like additional information. We stand ready to assist during this difficult time and hope you will call on us as needed.

Sincerely,

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APG Asset Management (The Netherlands)

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Head of Responsible Investment
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cc: Thomas J. Donohue, President and CEO
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