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August 24th, 2010

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OFFICE OF THE SECRETARY

The Honorable Mary L. Schapiro
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Proxy Access

Dear Chairman Schapiro

It has come to our attention that the Securities and Exchange Commission plans to meet on Wednesday, Aug. 25 to consider whether to adopt changes to the federal proxy and other rules that will facilitate director nominations by shareholders.

I am writing to express my concern that the pending changes will lead to a rash of proposals by shareholders that will be both unproductive and distracting to management. At the same time, these changes will only exacerbate the focus on delivering short-term results at the expense of long-term value creation. While I fully appreciate the value that investors can bring to the management of the enterprise, I also believe that if investors want a seat at the table, they must make a commitment to the company in terms of degree and duration that is commensurate to that of other stakeholders.

Lost in the debate around shareholder democracy is the question of the cost to the enterprise in terms of money and management distraction, particularly for smaller companies. A low ownership threshold could lead to a deluge of director proposals that, despite having little chance of being voted through, would still need to be addressed by management. This could prove to be a financial and managerial burden, especially to small companies, which does a disservice to the broader base of shareholders.

To be successful, a company must integrate the efforts and accommodate the interests of all major stakeholders: boards, management, employees, customers, investors and business partners. However, the current proxy system reflects an asymmetry between investors and other major stakeholders of companies in terms of information, transparency, commitment and accountability.

By the nature of their involvement, managers, directors and employees have careers and reputations invested in the company and so are inclined to have long-term commitments to the enterprise. Furthermore, disclosure requirements compel senior executives and board members to disclose their status with their companies, and the results of the companies they oversee are in the public domain.

On the other hand, investors have virtually total liquidity and, with the exception of 5% holders, can increase, decrease and exit their financial involvement quickly and invisibly. If they are unhappy with company performance or leadership, they have the option of selling their shares. None of the other stakeholders has that flexibility.

I believe investors should be part of the governance equation and that their contributions can be valuable to the management of a company. A seat at the table, however, requires mutual interdependency and transparency, not a situation where one party has the option of exercising a "hit and run." To achieve that, the proxy process must ensure that investors who want to have direct involvement in the management of the company have levels of transparency and commitments similar to other stakeholders.

In re-evaluating the proxy process, the SEC has a unique opportunity to harness the expertise and value of the financial community on behalf of companies and align the interests of investors with those parties who have long-term commitments to companies.

To that end, I respectfully suggest that, as part of the proxy review process, the SEC consider ensuring that investors who wish to participate in the governance process demonstrate their commitment to the company by holding a meaningful stake in the equity ownership of the company and agreeing to stand-stills, lock-ups or other sales restrictions. I propose that an investor demonstrate a minimum ownership of 5 percent of the shares outstanding and enter into a two-year lock-up agreement.

As Martin Lipton noted in a recent speech, "we have allowed the playing field on which the board of directors performs to tilt in favour of shareholders who seek short-term profits rather than long-term growth." I share the same concerns and believe that raising the relative power of investors without compelling any further commitment shifts the balance of power away from those with the most "skin in the game" and supports, not deters, short-term thinking. I believe our prescriptions cited above make progress toward mitigating that shift in power.

Sincerely,

Gordon W. McCoun
Vice Chairman

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