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Subject: Proxy Access

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June 16, 2010

Hon. Barney Frank
2252 Rayburn House Office Building
Washington, DC 20515

Hon. Spencer Bachus
2246 Rayburn House Office Building
Washington, DC 20515

Dear Representatives Frank and Bachus,

It is my understanding that the Senate today made an offer to the House conferees to amend Section 972 of the Senate bill. The amendment would set a five percent ownership threshold for shareowners to nominate an alternative board candidate and to have the nominee included in a company's proxy materials, otherwise known as "proxy access."

I strongly urge you to reject this offer. Both the House and Senate versions of financial reform legislation coming into this conference simply granted the Securities and Exchange Commission (SEC) clear authority to proceed with its own proxy access rule. There is some rationale for specifying thresholds in the bill, since Joe Grundfest and others have threatened to sue, calling the proposed standard arbitrary. (see my post on Stanford's Proxy Access Forum at <http://corpgov.net/wordpress/?p=1673>) However, the proposed threshold of 5% is far too high. I recommend either specifying the SEC's proposed thresholds or going with the existing language in the Senate version of the bill on proxy access, which is nearly identical to the House version.

The SEC already has a thoughtful proposal on the table. It creates three ownership thresholds that correlate to a company's market capitalization-one percent for large cap, three percent for mid-cap and five percent for small-cap, publicly-traded companies. The SEC arrived at these percentages after a thorough analysis of prevailing ownership levels among all types of investors in public companies in the United States.

The five percent threshold will defeat the proxy access rule's original intent-to employ a market-based solution to regulation that would empower shareowners to promote more responsible corporate behavior and greater accountability in the board room. As the SEC points out in its proxy access proposal, even America's largest public pension funds do not own more than a half of a percent in America's largest companies, such as those included in the S&P 500 and Russell 3000 indices. Even if the 10 largest institutional investors in the United States pooled their holdings at these companies, they would be unable to meet the five percent requirement.

Accepting this amendment would gut the intent of proxy access. Instead, please give shareowners the means to promote greater democracy and oversight of corporate boards. Thank you in advance for your support.

Sincerely,

James McRitchie, Publisher
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