



Council of Institutional Investors  
Priorities for the U.S. Securities and Exchange Commission  
December 2, 2008

### Governance Issues

- It is critical that the next SEC chair be a strong leader who can effectively advocate the importance of maintaining the agency's independence as a regulator and its primary mission of investor protection. A chair who will put investors first is a must in light of the debate to come in the 111<sup>th</sup> Congress over financial market and regulatory reforms.
- Strong division directors, particularly at Enforcement, Corporation Finance, and Trading and Markets, and a strong chief accountant, are also essential. All should be individuals who have demonstrated a commitment to serving the needs of investors. This is critical to restoring staff morale within the Commission and investor confidence externally.

### Proxy Issues

- A key priority of the Commission should be to approve a rule that allows significant long-term investors to place their nominees for directors on the company's proxy card.
  - The only way that shareowners can currently present alternative director candidates at a U.S. public company is by waging a full-blown election contest, which is onerous and prohibitively expensive.
  - A measured right of access, consistent with what is in place in much of Europe, would invigorate board elections and would make boards more responsive to shareowners, more thoughtful about whom they nominate to serve as directors and more vigilant in their oversight of companies.
- The Commission should also promptly approve the long-standing 2007 proposal by the NYSE-Euronext to eliminate uninstructed broker votes in director elections.
  - As much as 85 percent of all shares in U.S. public companies are held in "street name," meaning they are held of record in bank or brokerage accounts for the ultimate beneficial owners.
  - Allowing brokers to cast votes for uninstructed shares, as is currently permitted under NYSE rule 452, skews voting results and is akin to stuffing the ballot box for management as broker votes almost always are cast in favor of management's proposals and candidates for board seats.
  - Compromise measures such as proportional voting should be avoided because of the variation in the way they are applied and real potential for abuse.



- Rule 14a-8 should be preserved.
  - The proxy process can and should be improved. However, any changes should preserve the fundamental elements of Rule 14a-8.
  - Rule 14a-8 provides Council members and other long-term shareowners with a valuable tool for communicating with management and directors of portfolio companies and encouraging reforms intended to enhance accountability and shareowner value.

### **Auditing and Accounting**

- The Commission should significantly revise the November 2008 proposed rule regarding the potential use of IFRS by U.S. issuers to include additional milestones that provide greater assurance that any future replacement of U.S. accounting standards with IFRS will benefit U.S. investors.
  - Milestones should explicitly address issues regarding the rigor of the application, auditing and enforcement of IFRS in the U.S. environment.
  - Milestones should also explicitly address issues regarding the independence, investor orientation and due process of international accounting standard setters.
- The Commission should not entertain any further deferrals of Section 404 of the Sarbanes-Oxley Act for small companies.
  - All or some elements of the Section 404 requirements have been deferred by the Commission five times (currently scheduled to become fully effective in 2010).
  - Section 404 is a critical provision of SOX that has led to improved internal controls and higher quality financial reports.
  - Any company tapping the public markets to raise capital, large or small, should be required to have appropriate internal controls in place and have those controls annually assessed and reported on by external independent auditors.