

April 13, 2010

TO THE MEMBERS OF THE UNITED STATES SENATE:

The undersigned organizations and institutions represent hundreds of thousands of businesses, small and large, from all sectors of the economy employing tens of millions of Americans, as well as non-profit public policy groups interested in fostering entrepreneurship and shareholder return for retail investors.

Our organizations strongly support legislative and regulatory reform that will protect investors, improve the effectiveness of financial regulators, and assist capital formation. Reform that adheres to these goals is an important response to the financial crisis and necessary to spur real economic growth. In our view, the so-called “corporate governance” provisions Title IX, Subtitle E (sections 951 through 959) and Subtitle G (sections 971 through 974) of the “Restoring American Financial Stability Act,” do not further these objectives and, for that reason, we oppose their inclusion in financial services reform legislation.

As you know, there is no evidence that the issues addressed by these provisions were responsible for the financial crisis. Moreover, we believe that their enactment will lead to serious unforeseen (and unforeseeable) consequences that will inhibit job creation, endanger the ongoing economic recovery, and prevent the American economy from reaching its full potential.

First, various academic analyses of the financial crisis have found that it was not caused, in whole or in part, as a result of the failure of existing corporate governance structures¹ and that many of the reforms currently under consideration, such as proxy access, may destroy or seriously erode shareholder wealth.²

Second, we believe that the enactment of statutory provisions mandating a federal right to proxy access and an advisory vote on executive compensation (“say on pay”), disenfranchising retail shareholders and requiring majority voting in uncontested director elections would:

- Federalize corporate law, thereby creating a “one-size-fits all” approach to the resolution of these issues that will deprive the American economy of diversity and innovation, impose an unwarranted burden on mid-sized and smaller companies, marginalize the state corporate law expertise that has been developed over decades and is better suited to address these issues, and undermine ongoing reforms undertaken by the State of Delaware and the “Model Business Corporation Act,” which impacts 30 states;

¹ *Did Corporate Governance “Fail” During the 2008 Stock Market Meltdown? The Case of the S&P 500*, Brian R. Cheffins, S.J. Berwin Professor of Corporate Law, Faculty of Law, University of Cambridge, *The Business Lawyer*, Volume 65, November, 2009.

² Professor Joseph Grundfest, co-director Rock Center on Corporate Governance and the William Franke Professor of Law and Business, Stanford Law School, *Working Paper Number 71*, submitted to the Securities and Exchange Commission, January 18, 2010.

- Threaten shareholder wealth creation and preservation by creating an excessive focus on short-term actions and results as management becomes increasingly distracted from its long-term business objectives by annual proxy contests;
- Unleash an onslaught of activists trying to manipulate the proxy process to force corporate decisions that adversely impact shareholders as a whole in order to further their parochial social or political agenda; and
- Saddle the Securities and Exchange Commission (“SEC”) with significant additional responsibilities at a time when it is struggling to perform its existing mission critical goal of protecting investors.

Thank you for your consideration of our views. We would be pleased to discuss these views further with you and your staffs, and to provide what we believe are more effective and expedient alternatives for addressing these matters.

Sincerely,

American Insurance Association
Americans for Tax Reform
Business Roundtable
Center on Executive Compensation
Competitive Enterprise Institute
Financial Services Roundtable
National Association of Manufacturers
National Association of Wholesaler-Distributors
National Investor Relations Institute
Property Casualty Insurers Association of America
Retail Industry Leaders Association
The U.S. Chamber of Commerce