

# COMMITTEE ON CAPITAL MARKETS REGULATION

February 23, 2015

Keith F. Higgins  
Director, Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

VIA ELECTRONIC MAIL: HigginsK@SEC.GOV

Re: The Committee on Capital Markets Regulation's recommendation regarding  
"unelected directors"

Dear Mr. Higgins:

The Committee on Capital Markets Regulation (the "**Committee**") has recently updated its study examining the frequency with which corporate directors resign or decline to stand for re-election after failing to receive a majority of shareholder votes.<sup>1</sup> This study has been updated to include 2014 data, a copy of which is enclosed. Our updated results show that 85% of directors who received less than a majority of votes were still board members two years after the vote. We have deemed this issue the "unelected directors" phenomenon.

Given the Committee's findings, the Committee recommends that the Securities and Exchange Commission (the "**Commission**") implement regulations requiring a board of directors to disclose specific reasons why a director who has failed to receive a majority of votes should continue to serve on the board. We would like to clarify that our recommendation is that this requirement should apply to *each* of the three primary shareholder voting formats – "plurality voting," "plurality plus resignation voting," and "true majority voting." In the "plurality plus resignation" and "true majority" voting regimes, the board of directors must actively decide whether to accept the resignation of the losing director. The board should be obligated to disclose the specific reasons for not accepting a resignation. However, even in a "plurality voting" regime, in which a director who fails to receive a majority of votes is not required to submit a resignation, the Committee believes that boards in these regimes also should be required to give a specific reason why that director should remain on the board. As mentioned in our study, of the 237 cases in a "plurality voting" system in which a director failed to receive a majority, only 18 provided an explanation for the poor election results.<sup>2</sup> We believe that

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<sup>1</sup> Committee on Capital Markets Regulation, *Annual Shareholder Meetings and the Conundrum of "Unelected" Directors*, available at

<http://capmksreg.org/2014/06/committee-issues-statement-on-unelected-directors/>

<sup>2</sup> *Id.* at 8.

explanations should have been provided in each of the 237 cases, so the Commission should mandate this disclosure in “plurality voting” regimes in addition to “plurality plus resignation” and “true majority” voting regimes.

\* \* \*

Thank you very much for your consideration of the Committee’s recommendation. Should you have any questions or concerns, please do not hesitate to contact me via email at [hscott@law.harvard.edu](mailto:hscott@law.harvard.edu) at your convenience.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'H. Scott', with a long horizontal flourish extending to the right.

Hal Scott  
Director