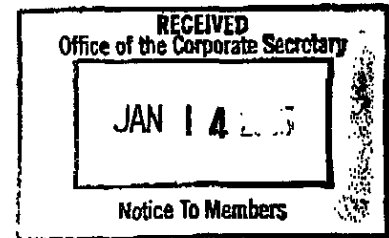


# COUNCIL OF INSTITUTIONAL INVESTORS



Suite 512 • 1730 Rhode Island Avenue, N.W. • Washington, D.C. 20036 • (202) 822-0800 • Fax (202) 822-0801

January 12, 2005

Barbara Z. Sweeney  
Office of the Corporate Secretary  
NASD  
1735 K Street NW  
Washington, DC 20006-1500

Re: Notice 04-83

Dear Ms. Sweeney:

The Council of Institutional Investors, an association of more than 140 corporate, public and union pension plans responsible for more than \$3 trillion in pension assets, believes that corporate governance structures and practices should protect and enhance accountability to shareowners. As a result, the Council supports efforts to ensure that conflicts of interest—whether involving a company's directors, executives or investment banker—are fully and concisely disclosed to shareowners.

We agree that proxy statement disclosures regarding fairness opinions should be expanded to include "a clear and complete description of any significant conflict of interest by the member, including, if applicable, that the member has served as an advisor on the transaction in question and the nature of compensation that the member will receive upon the successful completion of the transaction."

Also helpful for investors would be disclosures on the procedures used by firms to protect against conflicts of interest and to determine the appropriateness of valuations. Such information would give investors the ability to evaluate the quality controls in place for finalizing a fairness opinion.

The Council shares the NACD's concerns that investors may not be fully aware of the subjective nature of fairness opinions or the potential conflicts surrounding them. During a 2002 meeting with the Delaware Chancery Court, Council members complained that fairness opinions were of little value to shareowners and that additional information—projections, assumptions, discount rates, information about who provided the estimates and the date of the projections used—would be helpful. One Council member recommended that disclosure include copies of the spreadsheets used by investment bankers in making their fairness assessments.

The Council asks the NASD to expand its review and reform efforts regarding fairness opinions to include additional disclosures of value to investors.

Sincerely,

  
Ann Yerger  
Executive Director

cc: Mary Schapiro, Vice Chair and President, Regulatory Policy and Oversight