

KILROY 001

AMENDMENT TO H.R. _____

OFFERED BY Ms. KILROY

[amendment to the IPA discussion draft of October 1, 2009]

At the end of title IV insert the following:

1 **SEC. 414. ADDITIONAL RESPONSIBILITIES TO SECURE DE-**
2 **LIVERY OF DIVIDENDS, INTEREST, AND**
3 **OTHER VALUABLE PROPERTY RIGHTS.**

4 Section 17A of the Securities Exchange Act of 1934
5 (15 U.S.C. 78q-1) is amended by adding at the end the
6 following new subsection:

7 “(g) DUE DILIGENCE FOR THE DELIVERY OF DIVI-
8 DENDS, INTEREST, AND OTHER VALUABLE PROPERTY
9 RIGHTS.—

10 “(1) DUE DILIGENCE OBLIGATION.—Each
11 issuer of any security registered pursuant to section
12 12 of this title shall exercise due diligence in deliv-
13 ering dividends, interest, and other valuable property
14 rights to their owners, whether such dividends, inter-
15 est, or other valuable property rights are delivered
16 by any issuer or on behalf of any issuer by any pay-
17 ing agent.

18 “(2) REVISION OF REGULATIONS REQUIRED.—

19 The Commission shall amend the provisions of sec-

1 tion 240.17Ad-17 of the Commission's regulations
2 (17 C.F.R. 240.17Ad-17) as in effect on December
3 8, 1997—

4 “(A) to extend the application of such sec-
5 tion to all such paying agents, including the ob-
6 ligation to use database searches as required of
7 transfer agents; and

8 “(B) to extend the application of such sec-
9 tion to security holders who became lost secu-
10 rity holders before such date.

11 “(3) NOTICES.—

12 “(A) NOTICE ON CHECKS OR OTHER VALU-
13 ABLE PROPERTY RIGHTS TO SECURITY HOLD-
14 ERS.—Any check or notice to any security hold-
15 er who has failed to cash or deposit a previous
16 check for any dividend or interest payment or
17 has failed to process a valuable property right
18 as instructed shall bear a printed notice to the
19 effect—

20 “(i) if a check or other valuable prop-
21 erty right has been sent to a security hold-
22 er, and the check or other valuable prop-
23 erty right has been returned to the sender,
24 the security holder is considered a ‘lost se-
25 curity holder’ whenever that expression is

1 used by the Unites States Securities and
2 Exchange Commission; and

3 “(ii) if a check or other valuable prop-
4 erty right is sent to a security holder, and
5 the check is not negotiated within 7
6 months or the other valuable property
7 right is not processed as instructed within
8 7 months, then that security holder shall
9 be considered a ‘lost security holder’ and
10 shall be treated in the same way as lost se-
11 curity holders are treated under subpara-
12 graph (A).

13 “(B) NOTICES ON SUBSEQUENT COMMU-
14 NICATIONS.—If the lost security holder (as de-
15 fined in subparagraphs (A)(i) and (A)(ii)) is to
16 be sent another regularly scheduled communica-
17 tion, including a dividend or interest check,
18 then that next communication shall notify the
19 security holder—

20 “(i) that a previous check or valuable
21 property right has been returned to the
22 sender or has not been negotiated or proc-
23 essed as instructed, and such notice shall
24 request the security holder promptly to ne-
25 gotiate the received check or process the

1 received valuable property right as in-
2 structed; and

3 “(ii) that if such check or other valu-
4 able property right has not been received
5 by the security holder, then the security
6 holder should call the sender at the toll
7 free number in the notice or should write
8 or otherwise contact the sender at the ad-
9 dress or addresses in the notice.

10 In no event shall the next regularly scheduled
11 communication occur longer than 7 months
12 after the original sending.

13 “(C) EXCEPTIONS.—Paying agents may
14 exclude from the search requirements any lost
15 security holder when the value of all dividend,
16 interest, or other valuable property rights due
17 to the security holder plus the value of all as-
18 sets listed in the lost security holder’s account
19 is less than \$25.

20 “(4) LISTING OF LOST SECURITY HOLDERS.—
21 The Commission shall establish, or provide for the
22 establishment by others, of a database that is acces-
23 sible from the Internet and that contains a list of
24 the names of persons who are lost security holders,
25 the names of those issuers or paying agents who are

1 obligated to deliver to them their dividends, interest,
2 and other valuable property rights, and, in the case
3 of paying agents, the identity of the issuer. The
4 database and Internet site shall be created or caused
5 to be created by the Commission in accordance with
6 such procedures as the Commission shall prescribe
7 by rule, regulation, or order.

8 “(5) INTEREST ON UNPAID AMOUNTS; TRUST
9 FOR SECURITY HOLDERS.—Any amounts to which
10 security holders are entitled shall be held in trust by
11 any issuers or any paying agents for the benefit of
12 the security holders. Interest on the amounts held in
13 trust shall—

14 “(A) accrue for the benefit of an issuer or
15 its paying agent as provided for by agreement
16 between them for the first 6 months after the
17 return of any undelivered dividend or interest
18 payment or 7 months after a payment has been
19 sent but remains uncashed;

20 “(B) accrue for the benefit of the security
21 holders beginning 6 months after the return of
22 any undelivered dividend or interest payment or
23 7 months after a payment has been sent but re-
24 mains uncashed; and

1 “(C) end upon the delivery as escheated or
2 unclaimed property to a State pursuant to
3 State law.

4 “(6) USE OF PROFESSIONAL SEARCH FIRMS.—

5 “(A) No lost security holder shall be
6 turned over to a professional search firm for lo-
7 cating until after two database searches have
8 been conducted, regardless of whether the secu-
9 rity holder was deemed ‘lost’ before, on, or after
10 December 8, 1997.

11 “(B) The issuer or its paying agent shall
12 solicit competing bids for locating lost security
13 holders in accordance with such procedures as
14 the Commission shall prescribe by rule, regula-
15 tion, or order. Any successful bidder shall re-
16 port to the issuer, its paying agent, and the
17 Commission the number of accounts pursued,
18 the percentage of accounts recovered, the
19 amount and percentage of funds recovered, the
20 names of those who recovered, and the gross
21 and net amounts each received.

22 “(7) LIABILITY.—Any issuer or paying agent
23 that fails to exercise due diligence in accordance
24 with the requirements of this subsection shall be lia-
25 ble to any lost security holders or class of lost secu-

1 rity holders for damages. If the court determines
2 that such failure constitutes gross negligence or
3 wanton misconduct, the court may award punitive
4 damages in an amount equal to triple the amount of
5 such damages. An action under this paragraph may
6 be brought in any Federal court of competent juris-
7 diction.

8 “(8) REGULATIONS; REPORT.—The Commission
9 shall—

10 “(A) adopt such rules, regulations, and or-
11 ders necessary to implement this subsection no
12 later than 3 months after the date of enactment
13 of this subsection;

14 “(B) provide a report to Congress con-
15 cerning its progress toward implementation of
16 this subsection no later than 6 months after
17 such date of enactment; and

18 “(C) thereafter include in its annual report
19 similar information.

20 “(9) DEFINITION OF PAYING AGENT.—For pur-
21 poses of this subsection, the term ‘paying agent’ in-
22 cludes any issuer, transfer agent, broker, dealer, in-
23 vestment company, mutual fund, investment adviser,
24 indenture trustee, custodian, or any other person ob-

1 ligated to deliver dividends, interest, or valuable
2 property rights.”.

