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March 27, 2009

Elizabeth M. Murphy  
Secretary  
U.S. Securities and Exchange Commission  
100 F. Street, NE  
Washington, D.C. 20549

VIA ELECTRONIC MAIL

Subject: Proposed Amendment to New York Stock Exchange Rule 452,  
File Number SR-NYSE-2006-92

Dear Ms. Murphy:

The Shareholder Communications Coalition (“Coalition”)<sup>1</sup> is pleased to have the opportunity to provide comments on the proposal by the New York Stock Exchange (“Exchange” or “NYSE”) to amend NYSE Rule 452, to eliminate broker discretionary voting for the election of directors. The Securities and Exchange Commission (“Commission” or “SEC”) has published this proposed Rule amendment for public comment.

Since there are so many interrelated components to the proxy voting and shareholder communications system, the Coalition believes that the Commission should refrain from approving any changes to broker discretionary voting until this issue can be examined as a part of a comprehensive review of the entire system.

#### Background

The Exchange estimates that 70-80% of all public companies’ shares are held in “street name,” meaning that the underlying beneficial owners of corporate shares are not the shareholders of record. For every shareholder meeting, beneficial owners receive proxy materials, including information about the issues to be voted on at a meeting. Beneficial owners also receive a voting instruction form (“VIF”) that is to be used by them to indicate their voting preferences. Beneficial owners then return this VIF for appropriate processing.

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<sup>1</sup> The Shareholder Communications Coalition currently comprises the following organizations: the Business Roundtable, the National Association of Corporate Directors, the National Investor Relations Institute, the Securities Transfer Association, and the Society of Corporate Secretaries & Governance Professionals. You can contact the Coalition through its website at [www.shareholdercoalition.com](http://www.shareholdercoalition.com).



Business Roundtable



SOCIETY OF CORPORATE SECRETARIES  
& GOVERNANCE PROFESSIONALS



THE  
SECURITIES TRANSFER  
ASSOCIATION, INC.

If a beneficial owner of equity shares has not provided specific voting instructions at least ten (10) days before a shareholder meeting, NYSE Rule 452 permits brokers to vote the shares of such owner if the proposal before the shareholder meeting is considered a “routine” matter. Under the amendment to Rule 452 that is before the SEC for approval, the Exchange proposes to treat the uncontested election of directors as a “non-routine” matter, thereby prohibiting brokers from voting shares without receiving instructions from beneficial owners.

This proposed prohibition on broker discretionary voting could have unintended consequences, given the current challenges to beneficial owner participation in proxy voting. Without additional investor education and the adoption of other mechanisms to communicate directly and efficiently with beneficial owners, fewer beneficial owners will participate in the voting process. Discretionary broker voting on behalf of beneficial owners, while imperfect, is better than no voting at all. As such, this proposed amendment will favor the interests of institutional investors over individual owners. As an alternative, the SEC should be considering measures that benefit the entire shareholder base, and avoid the risk of disenfranchising beneficial owners.

#### Broker Voting is Only One Component of the Proxy System

Broker discretionary voting is just one issue of many in the proxy voting and shareholder communications system. Since 2004, members of the Coalition have been urging the Commission to undertake a thorough and all-inclusive review of this system for the reasons summarized below.

Advocacy for a comprehensive review of the proxy system started with the filing of a formal Petition for Rulemaking on April 12, 2004, by the Business Roundtable, one member of the Coalition. This Petition requested that the Commission begin a review of its rules on shareholder communications and other proxy process issues.<sup>2</sup>

The Coalition submitted a comment letter to the Commission on July 29, 2005, again urging a thorough examination of the SEC’s proxy rules. In this letter, the Coalition recommended that any review of broker discretionary voting be accompanied by a simultaneous examination of the shareholder communications rules.<sup>3</sup> The Coalition made a similar request in correspondence with the Exchange on June 30, 2006, basing its recommendation on the fact that NYSE Rule 452 and the shareholder communications

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<sup>2</sup> Petition for Rulemaking Regarding Shareholder Communications, Business Roundtable, April 12, 2004, available at <http://www.shareholdercoalition.com/BRTPetition41604.pdf>.

<sup>3</sup> Shareholder Communications Coalition Comment Letter to the Securities and Exchange Commission, July 29, 2005, available at <http://www.shareholdercoalition.com/SCCLettertoSEC72905.pdf>.

process are so interrelated.<sup>4</sup> Members of the Coalition also supported a comprehensive review of these rules at the SEC Roundtables conducted in May of 2007.<sup>5</sup>

The Coalition is very disappointed that the Commission is now discussing the adoption of an amendment to Rule 452, without considering the other issues embedded in the current proxy voting and shareholder communications system. We are especially disappointed that the proposed amendment to Rule 452 does not address the interests and needs of individual investors, who are central to our capital markets.

#### Beneficial Owners Do Not Understand the Proxy System

This Rule 452 proposal was developed by the Exchange's Proxy Working Group, established in April of 2005 to review the rules regulating the proxy voting process. As a part of the Proxy Working Group's research, the Exchange commissioned an Investor Attitudes Study ("Investor Study"), by the Opinion Research Corporation in April of 2006.<sup>6</sup> Overall, the Investor Study found that: (1) many investors were uninformed about the stock registration process, and (2) individual investors were also very confused about the proxy voting system.

In its survey data, the Investor Study found a significant lack of understanding about the street name system. Of those investors surveyed, 41% believed that the stock they own is always registered in their name; and another 23% admitted that they are not sure under whose name the stock is registered.<sup>7</sup>

Similarly, the Investor Study found that very few investors understand the role of brokers in the proxy voting system. When asked a question about what occurs if an investor chooses not to participate in a proxy vote, investors responded as follows:

- One-third of the investors (33%) did not know what happens to their vote;
- Another 30% believed that their shares were not voted at all;
- A quarter of the investors (27%) believed that their shares were voted by their broker in favor of a company's recommendations; and

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<sup>4</sup> Shareholder Communications Coalition Comment Letter to the New York Stock Exchange, June 30, 2006, available at <http://www.shareholdercoalition.com/SCCLetterNYSE6302006.pdf>.

<sup>5</sup> Cary Klafter, Intel Corporation, SEC Roundtable Discussions Regarding the Federal Proxy Rules and State Corporation Law, Unofficial Transcript, May 7, 2007, pp. 183-184; Lydia Beebe, Chevron Corporation, SEC Roundtable Discussions on Proxy Voting Mechanics, Unofficial Transcript, May 24, 2007, pp. 16-20; Thomas Lehner, Business Roundtable, SEC Roundtable Discussions on Proxy Voting Mechanics, Unofficial Transcript, May 24, 2007, pp. 90-91; and Charles Rossi, Securities Transfer Association, SEC Roundtable Discussions on Proxy Voting Mechanics, May 24, 2007, pp.117-118, available at <http://www.shareholdercoalition.com/roundtables.html>.

<sup>6</sup> Investor Attitudes Study, Opinion Research Corporation, April 7, 2006, available at <http://www.shareholdercoalition.com/NYSEORCInvestorStudy4706.pdf> (hereinafter "Investor Study").

<sup>7</sup> *Id.* at 7.

- Only a small minority of investors (10%) answered the question correctly that brokers retain the discretion to vote based on their own preferences.

This widespread ignorance of the proxy process extends to other aspects of the voting and communications system. For example, the Investor Study also found that brokers were not adequately explaining to investors their right to be classified as a Non-Objecting Beneficial Owner (“NOBO”) or an Objecting Beneficial Owner (“OBO”), for the purpose of receiving proxy communications directly from an issuer.<sup>8</sup> When the choices were explained objectively in the Investor Study, a substantial majority of investors opted for direct communications (i.e. NOBO status) with the companies in which they are invested.

The Investor Study’s detailed findings included the following:

- A majority of the investors surveyed (53%) did not remember being asked if they wanted their contact information provided to companies whose stock they purchased.<sup>9</sup> When you combine this figure with the number of investors who were certain that they were not asked their preferences, only 20% of the investors surveyed remember being asked about this issue.
- Of those investors who remember being asked about providing contact information to companies they invest in, 79% authorized their broker to provide this information. And for those investors who were not asked, 71% said that they would have agreed to provide their contact information if the issue had been raised.
- When asked a related question about being informed directly by companies in which an investor has purchased shares, a majority (54%) stated that it is important that they be informed directly, not via a third party, about shareholder matters.
- When given a detailed explanation of the difference between OBO and NOBO status, investors selected NOBO, by nearly a 2-1 margin (64%). If a fee of \$25 or \$50 is charged to maintain OBO status, between 86% and 95% of the investors surveyed selected NOBO status.

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<sup>8</sup> Current SEC rules permit the disclosure of the name, address, and number of shares registered in the name of a broker or bank for any beneficial owner who does not object to such disclosure, as a part of the proxy solicitation process. This type of beneficial owner is called a Non-Objecting Beneficial Owner (“NOBO”). Any beneficial owner who does not want to have direct communication with a public company that he or she invests in is called an Objecting Beneficial Owner (“OBO”).

<sup>9</sup> Remarkably, the number of investors who don’t recall being asked is highest for those who: (a) set up their brokerage account in person (56%), and (b) established a full service brokerage account (54%). Investor Study at 9.

The process by which brokers and banks classify individual investors as either NOBOs or OBOs is, at best, opaque. There is no standardized language used by intermediaries that would fully disclose the NOBO/OBO options to retail investors. There is no evidence that brokers and banks are re-visiting an investor's decision to be a NOBO or an OBO on a periodic basis. Finally, with as many as 75% of beneficial owner shares classified as OBOs, there currently may be, or, in the past there was, a practice among intermediaries of making OBO status the default position.<sup>10</sup>

The Investor Study reveals many of the flaws in the current shareholder communications system. It indicates that investors prefer direct communications, even though there is considerable confusion about how the system works. If the Commission moves ahead to amend Rule 452 without a proactive investor education initiative and without improving the ability of issuers to communicate with their shareholders, beneficial owners may well be disenfranchised. As noted below, both of these measures were recommended by the Proxy Working Group in its findings.

#### The Proxy Working Group Recommended A More Integrated Approach to Address the Needs of Beneficial Owners

In its first Report issued on June 5, 2006, the Proxy Working Group recognized the interrelationship between broker discretionary voting and the current shareholder communications rules. The Proxy Working Group's Report also warned against the unintended consequences of reforming only one part of the system without addressing the other components:

While the Working Group's focus was on the NYSE's role in the proxy process, the Group was continually struck by the integrated nature of the process, and how changing one part of this process impacts many other parts. For example, potential changes to broker discretionary voting immediately raised questions about the ability of an issuer to educate and to communicate with its shareholders about the importance of voting in the election of directors. This need increases dramatically with the movement towards majority voting for directors.<sup>11</sup>

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<sup>10</sup> See Statement by Catherine R. Kinney, President and Co-Chief Operating Officer, NYSE Euronext, SEC Roundtable Discussions on Proxy Voting Mechanics, May 24, 2007, p. 60, available at [http://www.sec.gov/news/openmeetings/2007/openmtg\\_trans052407.pdf](http://www.sec.gov/news/openmeetings/2007/openmtg_trans052407.pdf). The Proxy Working Group estimates that investors with OBO status make up approximately 75% of shares held in street name. Report and Recommendations of the Proxy Working Group to the New York Stock Exchange, June 5, 2006, p.11, available at [http://www.nyse.com/pdfs/PWG\\_REPORT.pdf](http://www.nyse.com/pdfs/PWG_REPORT.pdf).

<sup>11</sup> Report and Recommendations of the Proxy Working Group to the New York Stock Exchange, June 5, 2006, page 3, available at [http://www.nyse.com/pdfs/PWG\\_REPORT.pdf](http://www.nyse.com/pdfs/PWG_REPORT.pdf). This view was re-affirmed in a 2007 Addendum published by the Proxy Working Group. August 27, 2007 Addendum to the Report and Recommendations of the Proxy Working Group to the New York Stock Exchange Dated June 5, 2006, August 27, 2007, p. 8, available at <http://www.nyse.com/pdfs/PWGAddendumfinal.pdf>. ("The Proxy Working Group also noted that its efforts are just one part of a larger, system-wide review of the proxy voting process. The Proxy Working Group believes, as indicated in the original report, that such a system-wide review of the process is appropriate given the inter-related nature of the proxy process.").

As a result of its findings, the Working Group recommended that any changes to NYSE Rule 452 be accompanied by “large scale” efforts to educate investors about the proxy voting system:

The Working Group recognizes that amending Rule 452 to make the uncontested election of directors a ‘non-routine’ event is likely to have significant consequences for issuers. As described above, according to research performed by Opinion Research Corporation at the request of the Working Group, there appears to be ‘widespread ignorance’ of the proxy process. ... More broadly, many investors appear to not understand how their shares are held, the ‘street name’ process or other critical aspects of the proxy voting procedure. ... Accordingly, the Working Group recommends that the NYSE work with the SEC and the listed company community to develop a significant investor education effort, to inform investors about the proxy process and the importance of voting. ... Indeed, the Working Group believes it is a critical and integral part of its proposal to amend Rule 452 to make the election of directors a non-routine matter that the NYSE take a leading role in a large scale investor education effort to inform investors about the proxy voting process.<sup>12</sup>

In addition to dramatically improving investor education efforts, the Proxy Working Group also recommended that any amendment to Rule 452 be in tandem with new measures to improve the ability of issuers to communicate with their beneficial owners:

The Working Group believes that given its recommendation to amend Rule 452, and in light of the apparent lack of understanding among individual investors about, for example, broker voting and the ‘NOBO/OBO’ distinction, the NYSE should support efforts to improve the ability of issuers to communicate with their shareholders. These efforts should include a reexamination by the SEC of its rules regarding shareholder communication, as well as a further examination of the practical issues impacting shareholder communications under the sponsorship of the NYSE, which could include representatives of all the various constituencies.<sup>13</sup>

To begin this more holistic review of the proxy system, the Working Group created three Subcommittees:

- The Proxy Process and Shareholder Communications Subcommittee was organized to review the existing shareholder communications process. This Subcommittee has received presentations and reports from a number of different organizations, including several Coalition members, in an effort to

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<sup>12</sup> Report and Recommendations of the Proxy Working Group to the New York Stock Exchange, June 5, 2006, p. 22, available at [http://www.nyse.com/pdfs/PWG\\_REPORT.pdf](http://www.nyse.com/pdfs/PWG_REPORT.pdf).

<sup>13</sup> *Id.* at 22-23.

understand the mechanics of the proxy process system and evaluate potential improvements to the system.

- The Investor Education Subcommittee was organized to evaluate how to achieve greater shareholder participation in the proxy voting process. This Subcommittee has focused its efforts on how best to educate the retail investor about the proxy voting process. In its discussions, the Subcommittee has considered two educational initiatives: (1) developing uniform guidelines that all brokers would use when opening new customer accounts, to clearly identify the differences between NOBO and OBO status; and (2) addressing the need to ask existing beneficial owners with brokerage accounts to re-affirm their NOBO/OBO status, based on clear guidelines and information.
- The Cost and Pricing Subcommittee was organized to examine the appropriate fees and costs imposed by NYSE Rule 465 for the proxy administrative process. This Subcommittee has reviewed the Commission's new "notice and access" rules and has recommended that the Exchange not amend or extend Rule 465 to cover any of the new possible fees or costs involved in these new rules.

These Subcommittees have not finished their work or issued any public reports or analyses since the Proxy Working Group released an Addendum Report in August of 2007.<sup>14</sup> While the Working Group Subcommittees have continued their internal discussions since this Addendum was released, a number of unresolved issues still remain, including a more complete evaluation of the following:

- proportional voting;
- client-directed voting;
- a proposed free market model for proxy service providers;
- uniform broker guidelines regarding NOBO/OBO disclosures;
- procedures regarding a broker and investor re-affirmation process regarding NOBO/OBO status; and
- outstanding issues involving the SEC's new notice and access rules.

Since the efforts of the Working Group and its Subcommittees remain unfinished,

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<sup>14</sup> See August 27, 2007 Addendum to the Report and Recommendations of the Proxy Working Group to the New York Stock Exchange Dated June 5, 2006, August 27, 2007, pp. 6-8, available at <http://www.nyse.com/pdfs/PWGAddendumfinal.pdf>.

it is premature to move forward with an amendment to Rule 452, especially given the fact that this proposal was linked to three other Working Group recommendations: (1) to develop an investor education initiative; (2) to improve the ability of issuers to communicate with their beneficial owners; and (3) to facilitate a comprehensive review of the other elements of the proxy processing system.

The Proposed Action by the Commission on Rule 452 Ignores Other Problems with the Proxy Process System

In addition to the need for more investor education and reform of the shareholder communications rules, a number of other significant flaws in the proxy voting process have been identified to both the Proxy Working Group and the Commission. They highlight the fact that any change to the broker discretionary voting process is only one component of a very interrelated system, a system with problems that involve a non-competitive and expensive administrative framework and significant conflicts of interest among financial intermediaries. Specifically, these other issues include:

- Empty Voting. This practice occurs when an investor acquires voting rights to corporate shares, but may have little or no economic interest in those same shares.<sup>15</sup> This generally occurs through share lending. One example of this decoupling of economic and voting interests can occur when an investor borrows shares just before a corporate record date and then returns these shares to the long position investor shortly after the record date.

Under current rules and contracts, the short seller in possession of the shares on the record date is entitled to vote the shares at the shareholder meeting, even though he or she has little or no economic interest in the company or, more importantly, may have an interest that is adverse to the long-term shareholders of the company.

- Hidden Ownership. Another problem in the share voting process involves efforts by certain institutional investors to hide their ownership of a company's shares through the use of a financial derivative called a cash-

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<sup>15</sup> The term is meant to describe a situation where voting power has been "emptied" of a corresponding economic interest.

settled equity swap.<sup>16</sup> This problem arose last year in a proxy contest between the CSX Corporation, a U.S. railroad company, and a group of hedge funds.<sup>17</sup>

Commission rules that require public disclosure of beneficial ownership of 5% or more do not explicitly include derivative products. A cash-settled equity swap permits investors to create synthetic ownership positions that can evade public disclosure. Regulators in other countries have addressed this problem by requiring disclosure of these derivative positions, but the SEC has not taken steps to do the same here in the United States.<sup>18</sup>

- Over-Voting. A third problem in proxy voting involves over-voting. Over-voting occurs when a broker casts more votes than it is entitled to cast. This problem is typically caused by share lending.<sup>19</sup> Since brokers hold all their shares in fungible bulk, they do not typically match loaned shares to specific customer accounts. The inability to match long and short positions means that brokers are often unable to accurately calculate the number of equity shares their customers are entitled to vote when a corporate record date is established.<sup>20</sup> When shares are lent out by brokers, both long and short investors of the same security may receive an instruction form for proxy voting.
- Proxy Administrative Services. Another area of concern is the fact that one company—Broadridge—has a de facto monopoly in providing proxy processing services to public companies and investors. Under current Commission rules, public companies pay for the proxy processing services provided by Broadridge and its broker-dealer clients. Public companies have no choice in selecting the service provider, exert little or no control over the services that are actually provided, and have no direct ability to negotiate the

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<sup>16</sup> Under an equity swap of this type, two parties enter into an agreement that seeks to replicate the positions of a long and short investor in a particular stock. The long investor receives all of the benefits of an increase in the stock price, along with cash flows that replicate any dividends paid. The short investor receives the benefits of any decline in the stock's price. Any differences are settled in cash, although the counterparty to the short side of the transaction often holds the underlying securities as a hedge against its position. If the swap is unwound, the long investor is usually able to immediately purchase the underlying securities, significantly increasing its ownership position overnight.

<sup>17</sup> The hedge funds in this dispute purchased equity securities and cash-settled equity swaps, in an attempt to elect five new members to the CSX Board of Directors. More information on this dispute can be found on the Coalition's website at <http://www.shareholdercoalition.com/votinginfluence.html>.

<sup>18</sup> The Financial Services Authority, the securities regulator in the United Kingdom, announced in July 2008 that it will require the disclosure of certain derivative contracts, including cash-settled equity swaps, which reach a 3% level, when aggregated with ownership of common stock.

<sup>19</sup> Over-voting can also occur because of a failure to deliver securities by another broker on the settlement date.

<sup>20</sup> See SEC Staff Briefing Paper: Roundtable on Proxy Voting Mechanics, May 2007, available at <http://www.sec.gov/spotlight/proxyprocess/proxyvotingbrief.htm>.

fee structure.<sup>21</sup> As a result, there is little accountability or economic incentive to change the system.

The Coalition concurs with the recommendation of the Proxy Working Group that the NYSE consider commissioning a study to review: (1) the entire shareholder communications and proxy voting system, for the purpose of recommending a plan to change the current system into a free market model, with competitors to Broadridge and unregulated fees; and (2) the effect of eliminating Rule 465 under the current system and allowing individual issuers to negotiate reimbursement fees with banks and brokers for delivery of shareholder communications to beneficial owners.<sup>22</sup>

- Proxy Advisory Firms. Another unaddressed problem is the role of proxy advisory firms. Many institutional investors use these firms to help them vote their proxies in corporate elections. These firms offer vote recommendations on proposed corporate directors, as well as company and shareholder proposals. They wield enormous influence in shareholder elections. Unfortunately, these advisory firms are not subject to any required disclosures or oversight regarding their ability to control or influence the outcome of a vote.

The Coalition concurs with the recommendation of the Proxy Working Group that the SEC should examine the role of proxy advisory firms because these firms make voting recommendations and decisions over corporate shares which they do not own, or have an economic interest in.<sup>23</sup> The SEC should consider developing a regulatory regime for these firms, with appropriate disclosures and regulation. And, given the enhanced influence of proxy advisory firms if Rule 452 is amended as proposed, this review needs to take place prior to approval of the amendment.

#### The NYSE Proxy Working Group and the SEC Have Failed to Move Forward On These Outstanding Shareholder Voting and Communications Issues

Many of the issues mentioned in this letter were on the original agenda of the Exchange's Proxy Working Group, as it organized itself to evaluate "the broader framework of the proxy voting system."<sup>24</sup> However, almost four years after the Proxy

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<sup>21</sup> Broadridge operates through contracts with brokers and banks and has its fees for proxy processing services approved by the New York Stock Exchange and the SEC. The issuer then pays these fees.

<sup>22</sup> Report and Recommendations of the Proxy Working Group to the New York Stock Exchange, June 5, 2006, p. 29, available at [http://www.nyse.com/pdfs/PWG\\_REPORT.pdf](http://www.nyse.com/pdfs/PWG_REPORT.pdf).

<sup>23</sup> *Id.* at 6 ("While the Working Group recognizes that some of these groups have played an important role in the proxy process in recent years, the Working Group also believes that there is the potential for possible conflicts and/or other issues given the multiple roles such groups may have in the proxy system. Accordingly, the Working Group recommends that the NYSE request the SEC to study the role these groups play in the proxy voting process.")

<sup>24</sup> *Id.* at 2.

Working Group was formed, its work is clearly not finished on a number of issues that directly relate to broker discretionary voting. And the Commission has devoted very little public attention to these proxy processing issues, except for: (1) conducting a Roundtable in May of 2007; and (2) noting the interrelationship of proxy processing issues in a staff speech by the outgoing Director of the Commission's Corporation Finance Division in November of 2008.<sup>25</sup>

Broker discretionary voting is but one piece of the proxy system puzzle. The Commission needs to consider these issues in a comprehensive fashion in order to address a number of problems and flaws in the system:

- With the elimination of broker discretionary voting, many small and mid capitalization companies may experience greater quorum problems if they have large retail ownership and do not place a routine matter on their annual meeting ballot;
- Companies that seek to encourage more voting participation by beneficial owners cannot do so without using a costly and inefficient shareholder communications system that is broker-controlled, yet funded by issuers;
- The use of empty voting schemes and cash-settled equity swaps allow large institutional investors to manipulate the proxy voting process for the purpose of gaining a strategic market advantage;
- The increasing use of share lending and the lack of pre-mailing reconciliation by brokers makes it impossible for a vote tabulation to be completely accurate, a goal that is especially important in a close vote on a director election or a shareholder proposal;
- The continued reliance on a single provider for proxy administrative services has created an expensive and cumbersome system, with fixed fees established by regulatory fiat instead through free market forces; and
- The reliance by institutional investors on unregulated and unsupervised proxy advisory services has created a voting system in which tremendous power is wielded by a small group of individuals, without adequate transparency or regulation.

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<sup>25</sup> See SEC Roundtable Discussions of Proxy Voting Mechanics, May 24, 2007, available at <http://www.shareholdercoalition.com/roundtables.html>; John White, "Don't Throw Out the Baby with the Bathwater," Keynote Address at the ABA Section of Business Law Fall Meeting, November 21, 2008, available at <http://www.sec.gov/news/speech/2008/spch112108jww.htm>. In his speech, Director White advocated that the SEC review the "many related issues" in the proxy system. In addition to Rule 452 and proxy access issues, Director White listed the following: (a) NOBO/OBO status, (b) company communications with shareholders, (c) over-voting, (d) empty voting, and (e) ownership thresholds for shareholder proposals.

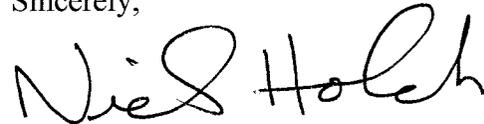
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The Coalition is concerned that these problems and flaws run the risk of further disenfranchising beneficial owners at a time when investors are very concerned about the state of the capital markets. At such a critical time, the Commission should be looking for opportunities to enhance investor trust by addressing the entire proxy voting and shareholder communications system. Now is not a time for taking a piecemeal approach to these important issues, and ignoring the needs and interests of individual investors who hold their stock in street and nominee name.

The Coalition once again urges the Commission to undertake a thorough evaluation of the proxy voting and shareholder communications system, so that the use of best practices, modern communications technology, and free market competition can replace the current antiquated system. This evaluation has been recently and successfully conducted in the United Kingdom and Canada, and the Commission should not miss the opportunity to do the same in the United States.

Please call on the Coalition or any of its members if we may be of further assistance on these issues.

Sincerely,

A handwritten signature in black ink that reads "Niels Holch". The signature is written in a cursive, flowing style.

Niels Holch  
Executive Director  
Shareholder Communications Coalition

cc: The Honorable Mary Schapiro  
The Honorable Kathleen Casey  
The Honorable Elisse Walter  
The Honorable Luis Aguilar  
The Honorable Troy Paredes  
Erik Sirri  
Shelley Parratt  
Brian Breheny