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E-MAIL: [redacted]

26 September 2018

Mr. Brent Fields, Secretary
Securities & Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File No. 4-725

Dear Secretary Fields:

I am submitting this comment for consideration in connection with the roundtable scheduled for mid-November on the proxy voting process.

I attach to this letter a pending rulemaking petition that is directly relevant to the Commission's concern about "proxy voting mechanics and technology," particularly as those issues pertain to retail investors (File No. 4-651).

The petition outlines some straight-forward regulatory steps that the Commission could take to update applicable rules for the Internet age and make it easy for retail investors to receive, store and access their proxy materials, as well as to vote their proxies. The petition draws on the experience of MoxyVote, which operated as such an online neutral platform for retail investors until it had to cease operations in 2012.

For the record, I testified on this issue during the Commission's February 2015 roundtable on the proxy voting process. I believe that the recommendations in the attached petition are as salient today as they were in the past.

I am submitting this comment for myself and not on behalf of any client, and I am not receiving compensation for submitting this filing.

Thank you for your consideration of these points.

Very truly yours,

Cornish F. Hitchcock

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AUG 21 2012
OFFICE OF THE SECRETARY

MOXY VOTE

1800 Bayberry Ct, Ste 103
Richmond, VA 23226

www.moxyvote.com

August 17, 2012

Ms. Elizabeth M. Murphy
Secretary
Securities & Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Request for rulemaking re Neutral Internet Voting Platform

Dear Ms. Murphy:

Pursuant to Rule 201.192(a), Larry Eiben hereby petitions the Commission to adopt regulations to recognize a new category of investment advisor, namely, a "neutral Internet voting platform" that an investor may use to receive information about his or her investments, to vote shares at corporate meetings, and to designate as the recipient of proxy materials to be transmitted by companies whose stock is registered with the Commission.

A regulatory change is warranted because current rules are needlessly preventing individual ("retail") investors from efficiently voting their shares via the Internet. Current rules do not allow individual investors to aggregate and receive information in ways that they find most useful in deciding how to vote; current rules also prevent them from being able to vote shares in a manner that is allowed to institutional investors. The change being proposed will address a chronic problem in this area, namely, the low participation by retail investors in voting shares of their portfolio companies.

Interest of petitioner and introduction.

Larry Eiben is a co-founder of Moxy Vote (www.moxyvote.com), which was designed as a web site that offers retail investors a way to intelligently and efficiently vote proxy ballots for public company stocks that are held in their portfolios. Conceptually, the idea is that shareholders can have the convenience of storing personal information about their portfolio online, as well as voting their shares from a single centralized online platform in the same manner as electronic platforms offered to institutional investors by such firms as Broadridge (via its "ProxyEdge" platform), Institutional Shareholder Services ("ISS") and Glass Lewis.

As originally conceived, Moxy Vote's business model was to allow a user to enter personal information in an online account. Moxy Vote would then provide access to electronic Voting Instruction Forms ("VIFs"), proxy statements and annual reports issued by portfolio companies. It would allow users to express and store for easy reference their preferences about how they want their shares voted at upcoming meetings and then vote the shares.

To enhance investors' understanding of issues that will arise at upcoming company meetings, Moxy Vote's plan was to allow the online posting of information about specific agenda items. The idea was not to create a "chat room" where anyone could post a comment, but to use Moxy Vote as a vehicle by which registrants and proponents of shareholder proposals could advise investors on these issues and help them cast an informed vote.

During its start-up period, Moxy Vote worked closely (and, we think, successfully) with the Commission staff in an effort to assure that its operations would not run afoul of the Commission's solicitation regulations. Those discussions inform the rulemaking proposal that we outline here.

Ultimately, however, Moxy Vote concluded that it would be unable to continue operations because the type of Internet service it is offering does not fall within existing regulatory classifications. Because Moxy Vote is aggregating and transmitting advice – but not generating advice through its own staff – it does not appear to qualify for recognition as a registered investment adviser. Because it does not fit into the "registered investment adviser" pigeonhole, a number of brokers have advised that they will not deliver proxy materials to their clients at moxyvote.com, even though the operational burden to them is not believed to be significant.

The refusal of brokers to disseminate information to shareholders at an online platform of their choosing is the first significant problem that needs to be addressed. The second major hurdle is the fact that proxy distribution/collection agents are presently charging significant fees to internet voting platforms to collect votes – a fee that we believe should be paid by public companies and one that proves substantially more burdensome to individual voters than institutional voters.

Because of these difficulties, Moxy Vote was recently forced to suspend operations – concluding that it would not be able to generate the scale necessary to make the company viable as a long-term entity. This occurred after extensive discussions not only with Commission staff, but also staff at FINRA and the New York Stock Exchange. The view all around appeared to be that current rules do not allow for the type of operation that Moxy Vote proposed, even though the model is widely available to Internet users in other sectors of our economy.

This is unfortunate, because Moxy Vote's brief history shows that there is a significant demand by users for such a service. Before deciding to suspend operations, Moxy Vote achieved the following milestones:

1. 197,000 people subscribed to Moxy Vote's content e-mails;
2. 56 leading organizations that sponsor shareholder resolutions regularly posted voting advice on moxyvote.com;
3. Working with the few brokers that were willing to route proxy materials to Moxy Vote, investors voted 30,000,000 shares through moxyvote.com;
4. 64 "Letters to Management" were sent by Moxy Vote readers;
5. 275,000 signatures, in aggregate, were collected on the Letters to Management.

This experience demonstrated to us that, contrary to the opinions of some, retail investors are not apathetic. They are, instead, being held back because current rules limit the channels through which investors receive and aggregate information and then act on that information.

The following section will outline the facts about the low level of retail investor voting. The section after that will explain how a neutral Internet voting platform will address that low level of participation. The final section will propose and explain how a new rule should be crafted to address the problems that any company will have providing such a service.

The chronic problem: low voting by retail investors.

It has long been recognized that retail investors do not vote their shares in significant numbers. According to an April 2011 Broadridge study, the number of retail accounts voted in FY 2008 through FY 2010 ranged from 15.3% to 17.6%.[1]

This low level of participation can have negative consequences for issuers and shareholders alike. As a recent Conference Board report noted, low turnout among retail investors may cause some issuers to have difficulty achieving a quorum. Moreover, the failure

[1] Broadridge, *Summary Voting Statistics – Retail Shareholders Three Fiscal Years (2008-2010)*, available at http://www.broadridge.com/notice-and-access/RetailVotingStatistics.pdf. *See also* Fabio Saccone, *E-proxy Reform, Activism, and the Decline in Retail Shareholder Voting*, The Conference Board (Dec. 2010), available at http://www.ssrn.com/abstract=1731362.

of retail shares to be voted may spell the difference between whether a specific agenda item passes or fails.[2]

There are many possible reasons for this low turnout. A retail investor may believe that voting is a waste of time because voting takes too much effort or that one's vote will not make a difference or that the proxy materials appear too voluminous to digest. Alternatively, a shareholder may put the proxy materials to one side, intending to vote later, but then forget.

In recent years there has been a movement towards using the Internet as a means of managing one's portfolio, and this Internet usage appears to be an avenue for greater participation. Broadridge notes that from 2008-2010, the voting rates for retail investors who receive proxy materials by mail is only 4%-5%, while the voting rates for investors who use "e-delivery" of proxy materials are two to three times higher.[3]

Although voting participation via the Internet is thus higher than the more traditional means of participation, the low turnout rate remains a problem. This is where a neutral Internet voting platform would be beneficial. Over time, there will be a greater acceptance of distribution and collection of proxy materials via the Internet in lieu of traditional mail delivery, and that trend may be increased by enhancing the online voting experience without sacrificing any of the investor protections that investor advocates and regulators have long sought to promote.

As we see it, a major reason for the low turnout is this: The current online voting experience discourages shareholders because the Internet is not being used in ways that allow the

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[2] Saccone, *supra* note 1, at p. 5.

[3] Broadridge, *supra* note 1, at p. 5.

voting shareholder to do online what they do on most web sites, namely aggregate and customize information in a format most convenient to him or her. To take a well-known example, Internet travel sites such as Orbitz or Expedia aggregate on a single site the information provided by a number of airlines, hotels, rental cars and cruise lines, and they allow individuals to customize their use of those site by storing their preferences for use in learning what's available and in completing the transaction.

By contrast, the current processes for voting one's shares online (*i.e.,* through sites such as the Broadridge-maintained website, proxyvote.com,) are inefficient and clunky. Investors receive notices about voting shares at individual meetings as singular, one-time events, and investors must go to proxyvote.com, key in a control number and manually complete each ballot item.

This is not how people use the Internet for online transactions. Suppose, for example, that a popular web site such as Netflix did not permit users to aggregate information about their preferences for movies, but instead required the user to (a) go online and order an individual movie whenever he or she wanted to order one and (b) refused to let users maintain a list of "saved" preferences to refer to. In this day and age no one would view that as an efficient system, yet *mutatis mutandis* that is the only voting option now available to a retail investor using the Internet.

Moreover, the shareholder is asked to make decisions without having any point-of-vote advice readily available through these sites. In addition, the avenues for voting shares may not be fully informative. For example, if an independent campaign is being waged, a dissident may not solicit retail investors with small holdings because they are deemed unworthy of contact (i.e., not a good return on investment given the cost per share to reach and influence this group). As investors increasingly gravitate towards the Web, there are opportunities to increase voter participation, as entrepreneurs create more "user friendly" sites that permit an investor to monitor and vote his or her portfolio.

In short, using a neutral Internet voting platform will be more attractive to the retail shareholder than existing options. A neutral platform will allow investors to aggregate and customize information about their holdings from one or several accounts at multiple custodians, to receive information provided by issuers and any shareholder advocates, to store voting preferences and to vote shares online. In this structure, the user can access and easily process a significant amount of point-of-vote advice which, according to a Moxy Vote user survey, is a significant reason why many retail shareholders are not currently voting.

How a neutral platform would operate.

A shareholder would provide a change-of-delivery instruction to his or her brokerage firm. The neutral site could facilitate the delivery of this instruction by providing an online authorization form and by delivering the form to the appropriate brokerage firm. Brokerage firms, or their distribution agent (*e.g.*, Broadridge), then update their delivery-preference database for the specified account. Then, whenever an issuer distributes proxy materials that require brokers to distribute VIFs, the materials will be delivered in electronic format to the neutral platform. In regard to voting the ballots, an investor may login to the neutral platform and vote ballots individually, or he or she may enter and store his or her "voting preferences," which are a tentative preference to vote one way or another on issues that are known to be coming up at a portfolio company. So, by way of the process described above, shareholders are able to receive and vote ballots electronically in an efficient and informed manner. It is worth noting that this process mirrors the existing process utilized by the institutional voting platforms and is therefore not expected to place a material operational burden on any participants in the process.

Investor protections.

Because a neutral platform will be disseminating information to shareholders, the Commission will obviously be concerned about compliance with rules on solicitations and related issues. In an effort to ensure compliance, as well as to address current concerns about "client-directed voting," Moxy Vote personnel met with staff, which provided helpful guidance. Based on that discussion, we believe that the Commission should authorize investors to receive information through Internet sites that agree to adhere to the following criteria:

1. The site does not exercise discretion with respect to investors' voting decisions; proxy materials are forwarded solely to permit the investor to vote.

2. The site does not manage money and exercises no authority over how an individual's holdings are bought, held or sold.

3. The site makes available all proxy materials before any votes can be cast.

4. Investors may preliminarily store their voting "preferences" on specific issues on the site (*e.g.*, "always vote with management," "vote for animal welfare shareholder protections"), but–

- the site must send the investor a notice once materials become available for a given ballot;
- the site must display to the investor a blank proxy card;
- the investor must then populate the card, using either his or her expressed preferences (which may be manually changed) or by voting each individual item;
- the investor must then affirm that the card, as completed, is how they want to vote. Only at this point can the vote be submitted by the neutral voting platform.

5. The site provides proxy materials neutrally from both sides in the event of a proxy

contest and presents both cards with suitable instructions about returning one or the other.

6. The site allows investors to revoke a proxy to the same extent as other stockholders.

7. The site complies with certain relevant aspects of the Investment Advisers Act of 1940 including standards related to fraud, ethics, information security, record-keeping and disaster-recovery as well as being subject to SEC examination.

8. Any person who wishes to post content on the site must sign an agreement with the site operator under which the person assumes responsibility for compliance with all applicable regulations as a condition of being able to post content on the site, including solicitation rules such as the obligation to file on EDGAR and the prohibition on materially false or misleading information.[4]

The first problem: current broker regulations.

During its operations Moxy Vote encountered practical problems in terms of its ability to persuade brokers to honor their clients' change-of-delivery instructions to transmit proxy materials electronically to moxyvote.com. FINRA Rule 2251 and NYSE Rule 451 require brokers to deliver materials to beneficial owners of shares held in their custody. However, the rules do not specify a delivery method or what constitutes a valid delivery location. That is the heart of the problem. Lacking a clear requirement or guidance, brokers have generally come to accept *only* (1) paper delivery to a physical address or (2) electronic delivery of a control number to an e-mail address as valid delivery options for retail investors. Brokers are uncertain whether they have an obligation to deliver ballots electronically to Internet voting platforms as directed by

[4] During its operations, and as a means of quality control, Moxy Vote limited participation to groups experienced in advocacy and generally familiar with SEC rules.

clients.

This lack of clarity and standards prompted Moxy Vote to approach FINRA and NYSE Regulation for assistance. It is not obvious why brokers should have a problem delivering VIFs to retail investors who desire to receive them at an electronic voting platform. When a beneficial owner asks that proxy materials be directed to an e-mail address, it is clear that the broker must maintain the delivery preference in a database and electronically transmit proxy materials to a company (e.g., Google's "Gmail" system) that maintains an electronic address on behalf of the owner and transmits e-mail to the user. In this situation, a delivery is being made to a third party that is unaffiliated with the shareholder under the presumption that the firm has no ability to act on behalf of the shareholder. Moxy Vote is proposing a similar relationship whereby the investor retains absolute control over voting decisions. Conversations with many brokers and Broadridge suggest that, from an operational standpoint, the process to deliver ballots to electronic voting platforms is not difficult and that the use of electronic voting platforms would not place a material burden on brokers. In fact, most brokers, if not all, already have this infrastructure available given the work that they do on behalf of institutional clients.

Why do some brokers refuse to deliver to electronic voting platforms for retail clients, and why does it matter? Taking the last question first, a neutral voting site cannot succeed as a business unless it increases public awareness of its existence and utility, and it cannot achieve those goals if it has to say, "Sorry, we can help you if you use brokers A, B and C, but not if you use brokers D, E or F." As a marketing strategy, that simply will not work. Moreover, Moxy Vote cannot subject itself to the risk of building a business around a fraction of brokers that are participating voluntarily only to potentially later have those brokers opt to discontinue participating at a later point in time. Not to mention, as a matter of policy, this latter situation would have a devastating effect on participation by retail investors who would be distrustful of any future efforts to help them.

As for why some brokers refuse to cooperate, in our experience with Moxy Vote, the principal reason that has been cited to us was "we're not required to," *i.e.*, some brokers simply don't see a benefit to their business to making the change and, given the lack of a regulatory requirement, have no plans to participate. Another common issue identified was "security," *i.e.*, the need to make sure that the investor truly wants proxy and other materials sent to moxyvote.com rather than the investor's personal URL address or home address. We fully share that concern and offered to work with whatever security requirements a broker may require. However, when resistant brokers were asked what security requirements they would need from Moxy Vote, there was no answer.

The concern over security that was directed to Moxy Vote is somewhat surprising because current industry practices suggest that security concerns are already being addressed without significant difficulty. As part of its effort to encourage greater Internet usage, Broadridge maintains a website (https://www.ics.delivery/live) that investors can use to notify their individual broker that the investor would like to receive materials by e-mail. If one clicks on the links for individual brokerage firms, it appears that most brokers require the investor to confirm his or her identity by providing nothing more than the last four digits of the investor's Social Security Number.

Moreover, the system we propose is hardly a brave new world fraught with unknown dangers. The same proxy ballot delivery model we propose here has successfully existed for years for institutional investors. Technology has now made it possible for retail investors to enjoy the same convenience as institutional money managers. Why should regulations written before the Internet age limit the ability of retail investors to benefit? As a practical matter, an elegant solution to the security issue for brokers with the most stringent security policies would be to maintain full control over the identity verification process. This state could be achieved by brokers by adding an option in the "delivery preference" section of their websites whereby a user could specify delivery to any number of electronic voting platforms. In other words, most brokers presently provide clients the ability to log in and change physical and/or e-mail addresses for delivery of proxy materials, and this would be a desirable place, from an efficiency and security perspective, to notate a preference to deliver to moxyvote.com. With this set-up, users would be required to login using the broker's standard security measures, before changing preferences.

When we discussed these issues with FINRA and NYSE Regulation, the staff did not mention security as an issue, but focused on administration and enforcement. As it now stands, FINRA rules and NYSE rules permit an investor to designate a third party agent to receive proxy materials, but only if the third party is a registered investment adviser. Because an RIA is registered with the Commission, it is possible for brokers, if desired, to consult a publicly available list of registered advisers in deciding whether to honor a client's request. As Moxy Vote is not an RIA – and does not appear to be eligible for that status under current interpretations – that was not an available option. The other concern cited was quality control and operational safeguards – two issues that are easily addressed through adherence to regulatory standards, as well as being subject to examination, as an SEC registrant.

So why doesn't Moxy Vote become a traditional registered investment adviser?

Section 202(a)(11) of the Investment Advisers Act defines "investment adviser" as a person who, "for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities," with seven exceptions. Moxy Vote did not charge users for the service, consistent with the practice of most Internet sites, so its services were not "for compensation" in the sense that it received payment. We cannot see how any future site would succeed either if it had to charge fees to retail customers. Also, while Moxy Vote did make advice available to its users, it did not generate that advice itself but rather aggregated advice from independent third parties.

Moxy Vote did explore with the staff several options, such as becoming an "internet investment adviser" under Rule 203A-2(f), but that rule appears to be aimed at sites such as those operated by advisers who are offering their own internally generated advice. Interestingly enough, the Rule's definition of "internet investment adviser" is conceptually similar to the type of site we discuss here, *i.e.*, a site that does not "merely use websites as marketing tools or that use Internet vehicles such as e-mail, chat rooms, bulletin boards and webcasts or other electronic media in communicating with clients."

We also discussed with staff the question of how a neutral website would fit within the framework contemplated for "proxy advisers" under the June 2010 *Concept Release on the U.S. Proxy System*, Release No. 34-62495. The current "proxy plumbing" rulemaking would be an ideal vehicle to propose a rule and seek comments on the model we propose here, which would provide three of the five functions that the Release (at p. 106) identifies proxy advisers as currently providing:

• executing votes on investors' proxies in accordance with instructions, which may include voting shares according to a customized proxy voting policy;
• assisting with the administrative tasks associated with voting and keeping track of the large number of voting decisions; and
• providing research and identifying potential risk factors related to corporate governance.[5]

The Release discusses the exemption now offered to proxy advisers in Rule 14a-2(b)(3) from solicitation rules. A neutral voting platform would meet all of the criteria in Rule 14a-2(b)(3)(i) through (iv), but would such a site be viewed as having a "business relationship" with retail investors, as the exemption specifies.[6]

We believe that the neutral voting platform idea can – and should – be incorporated into a proposed rule on "proxy plumbing." Moxy Vote provided extensive comments in response to the 2010 concept release, and we incorporate those comments here by reference.

<u>The second problem: excessive transaction fees.</u>

The industry currently operates such that brokers have outsourced the task of proxy distribution and collection to intermediaries, *e.g.,* Broadridge. Broadridge is then tasked with

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[5] As to the other two functions discussed in that concept release, the model being proposed would not make its own analysis or recommendations on matters presented for a vote, nor would it help mitigate conflict of interest concerns of the sort that may arise when an institution is voting on matters in which its interest may differ from the interest of its clients – although that is unlikely to be a concern if the voting platform is neutral, does not have voting discretion, does not accept users' fees and does not manage users' money. Also, any potential conflicts of interest with investment-related affiliates of neutral voting platforms would be addressed in each company's compliance policies.

[6] The exemption was specifically designed for advisers such as Institutional Shareholder Services, which serve such investors on a fee-based system, whereas a neutral voting platform can provide retail investors with the same convenience, though not for fees. When this exemption was adopted nearly 20 years ago, retail e-commerce as we today know it did not exist; the first web browser was not widely yet available, the advent of Internet companies such as Amazon, eBay, Google and Yahoo! still lay years in the future, and Facebook founder Mark Zuckerberg was only nine years old. Moreover, unlike retail customers, institutional users are willing to pay for a fee-based or subscription service such as ISS offers; retail consumers, by contrast, vigorously resist fee-based or subscription models on the Internet. But can it honestly be said that consumers who buys products on Amazon or eBay lacks a "business relationship?"

sending proxy materials, whether by physical mail, e-mail or by electronic file transfer to a voting platform (*e.g.*, moxyvote.com). Broadridge also collects votes by mail, phone, via proxyvote.com or via a daily file transfer from various web-based voting platforms. Fees for these various services have generally been set, or capped, by way of NYSE rules. Proxy distribution and collection fees are, as a matter of policy, intended to be paid by issuers.

As the industry has evolved in the past 15-20 years, an inherent flaw in the structure has gone unnoticed. That is, the issuer, as was originally intended, is not paying 100% of the costs related to the collection of proxy votes. More specifically, Broadridge and other processors are charging a fee that is paid by various voting platforms to allow those platforms to "plug in" to the voting infrastructure that they've created to gather votes. It is appropriate for Broadridge to charge a reasonable fee, given that they do incur substantial costs in supporting these relationships and daily file exchanges but, this is a terrible development as a matter of policy and any fee should be paid by issuers.

Why is it bad policy? The fee charged by Broadridge to web-based voting platforms is generally charged for each unique shareholder ballot that is processed. This is a logical fee for Broadridge as its operational costs are likely the same whether processing a ballot for an institutional client with 1,000,000 shares or a retail client with 10 shares. Institutional platform providers have historically simply passed these costs on to the voting clients. These fees are insignificant to institutional voters, and they have gone largely unnoticed. However, to retail investors, they are a significant deterrent to voting. And, presently, they are simply too high for platform providers like moxyvote.com to subsidize on behalf of retail voters by way of other revenue opportunities. The net effect of the current situation is that retail voters are effectively being asked to pay to vote through an online service – a situation that should be strictly avoided for proper functioning in a democratic society.

It is also particularly discouraging that electronic voting is the only voting method among the four voting options (mail, phone, proxyvote.com, electronic voting platforms) in which the retail shareholder or its agent is asked to pay to submit votes. So, this situation is bad policy. Electronic voting methods are obviously better for shareholders (i.e., they're more efficient and result in more informed votes) and better for issuers (i.e., because they increase voting turnout and reduce paper delivery/collection costs). So, presently this is the major deterrent to progress (i.e., greater retail participation and costs savings to issuers). Can one imagine if any retail votes would be collected if a retail shareholder was charged to vote by mail or phone?

How has this situation gone unnoticed? As mentioned above, the fee is nominal to large institutional voters and they're required to vote. Typically, services like those offered by ISS and Glass Lewis provide both voting advice and vote processing. The voting advice fee is typically many times larger than the vote processing fee so, again, there has been no reason to complain about these fees until retail shareholders enter the discussion – a group that is not required to vote and will not pay to vote or to receive vote advice. It is notable that, if institutional shareholders were not required to vote, participation would likely fall dramatically because of this cost. On the flip side, there may be an additional positive policy development by having the issuers subsidize the voting. That is, if there was no cost to vote or receive voting guidance, there may be a rise in institutional voting among institutions that are not required to vote (e.g., RIAs that, via an advisory contract, currently push the voting responsibility back to the individual investor).

We believe this transaction fee issue can be addressed with minimal rule-making. That is, the NYSE and FINRA Rules already contemplate a reimbursement to Broadridge and other processors for the collection of ballots through electronic channels. The problem, however, is twofold: (1) there is an interpretation issue about what that fee is intended to cover and (2) the current fee "cap" is set too low to cover the true costs incurred by Broadridge. We encourage the SEC to work with the NYSE & FINRA to encourage them to provide some interpretive guidance to the industry on existing rules. More specifically, the NYSE should state that the existing fee reimbursement for collecting ballots electronically is intended to fully cover all collection costs, including any file exchanges with internet voting platforms, and that issuers must pay all of these collection costs. Moreover, as part of its ongoing assessment of fees, the NSYE should re-evaluate the appropriate reimbursement level, paid by issuers to Broadridge, for ballots collected electronically. The present amount of $0.06 per ballot does not likely provide sufficient revenue to account for the electronic voting infrastructure that has evolved over time. It is again worth noting that issuers should not fear the increase in costs here. That is, they will likely realize substantial savings relative to other forms of proxy ballot delivery and collection, as well as, more efficient means of solicitation as needed. Also, FINRA should provide guidance to brokers that they may not hire intermediaries (e.g., Broadridge) that charge a fee to anyone other than issuers for proxy collection.

<u>Text of proposed rule.</u>

Given that we think the fee issue can be addressed without rulemaking, we propose the following regulatory amendments to address the broker delivery issue, which the Commission is empowered to adopt under section 14 of the Securities and Exchange Act of 1934.

1. Rule 240.14a-2(b) is amended by adding the following new paragraph (6):

"The furnishing of proxy voting advice by a neutral Internet voting platform as licensed by the Commission pursuant to Rule 14a-22."

2. Rule 14a-22 is hereby adopted:

"(a) An application for registration as a 'neutral Internet voting platform,' as defined herein, shall be filed on Form ___ in accordance with the instructions contained therein."

"(b) To be eligible for registration as a 'neutral Internet voting platform' (the 'platform') an applicant must certify that it is applying to act as an agent for investors who register with that site and by so doing, designate the site to receive proxy materials on the investor's behalf and to transmit the investor's voting instructions to a registrant or a registrant's agent. In addition, an applicant shall qualify for registration as a "neutral Internet voting platform" if the applicant, during the period of registration,–

"(i) does not exercise discretion with respect to investors' voting decisions and forwards proxy materials to clients solely to permit clients to vote;

"(ii) does not manage a client's assets and exercises no authority over how a client's shares are bought, held or sold;

"(iii) agrees to make available to clients all proxy materials before the investor votes any shares;

"(iv) allows clients to create a voting policy by storing their preliminary voting "preferences" on the site for, provided, however, that

(A) the applicant sends the investor electronic notice once any proxy materials become available;

(B) when the client is ready to vote, the applicant displays a blank proxy card that is ready to be filled in with respect to the items on the agenda;

(C) the client then populates the card, using either his or her expressed preferences (which may be manually changed) or by voting each individual item; and

(D) after populating the card by voting on specific items, the client then affirms that the card, as completed, is how the applicant is to vote their shares; only after these steps have occurred may an applicant transmit the client's voting instructions;

"(v) makes available to its users in an impartial fashion all proxy materials from both sides in the event of a proxy contest and presents both cards with suitable instructions about returning one or the other.

"(vi) allows clients to revoke a proxy to the same extent as other stockholders.

"(vii) creates a code of ethics and a set of compliance policies and procedures that address risks related to business operations, information security, record-keeping and disaster-recovery.

"(viii) requires any person who wishes to post content on the platform to sign an agreement with the applicant under which, as a condition of being allowed to post such content, the person assumes responsibility for compliance with all applicable regulations issued by the Commission; and

"(ix) agrees to register with the U.S. Securities and Exchange Commission and be subject to periodic examination.

"(x) The registration of any neutral Internet voting platform is subject to revocation or other penalties for any violation of this rule."

3. Rule 14b-1(b) is amended by adding at the end thereof:

"The broker or dealer may satisfy this requirement and any other requirement in this rule regarding transmission of information to a beneficial owner of stock by transmitting such information to a neutral Internet voting platform that is designated by the beneficial owner."

Respectfully submitted,

Larry S. Eiben
Co-Founder Moxy Vote, LLC