

M O R R O W  
S O D A L I

December 28, 2018

Mr. Brent J. Fields  
Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

RE: Roundtable on the Proxy Process, File Number 4-725

Dear Mr. Fields:

I am writing on behalf of Morrow Sodali. We are a global consultancy and service provider with expertise in corporate governance, proxy solicitation and a range of related services. We occupy a position at the center of the relationship between the companies that are our clients and the shareholders who invest in them. In addition to our global client base and our network of offices around the world, our firm's distinguishing characteristics are our understanding of shareholders, our practical ability to reach them and our commitment to helping companies engage productively with their owners.

We agree that the U.S. proxy system is overdue for reform. The array of issues highlighted during the roundtable revealed some of the system's serious defects and limitations. These failings undermine public confidence in the governance of listed companies and compromise the integrity of the capital markets generally.

Rather than repeat the observations and recommendations submitted by others, we would like to pose two questions for consideration by the Commission. In our view, answers to these questions can help lead the way through what Commissioner Stein calls the "tangled web" of the current proxy system and identify reforms that are straightforward and practical.

The first question: *Can the Commission step back from a one-size-fits-all regulatory approach and encourage the development of alternative systems for communication and proxy voting that serve the needs of increasingly diverse categories of shareholders (present and future)?*

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The second question: *Can the Commission find ways to make the proxy system achieve the standards for transparency, reliability and accuracy that are applicable to Corporate Actions? If votes are as important as dollars, the proxy system should be governed by the same procedural rigor and fiduciary standards as dividend payments, spinoffs, stock splits, mergers, rights issues, share buybacks, tenders, exchanges and other corporate actions.*

**Categories of share holders.** The ownership profile of listed companies is a complex maze of institutional investors, indexers, mutual funds, retail shareholders, street name accounts, control groups, traders, activists and others. But for the purpose of analyzing the operations of the proxy system, only two categories of shareholders are functionally relevant: registered holders and “street name” holders.

Registered holders, mostly individuals, are identified by name and address on the books of the company. The company can communicate directly with them, send them documents, solicit their votes, tabulate their proxy cards and verify their vote decisions. This “direct access” proxy process is simple, efficient and transparent. Virtually none of the problems discussed at the roundtable arise from this aspect of the proxy system, with one exception: reliance on printed material and the mail to reach registered accounts means that the process is slower and its costs are higher than would be the case in an electronic environment. While new technology introduced in recent years has helped increase efficiency and reduce costs, most of the impact has been on the margins of the proxy process.

The second category, street name holders, includes everyone else. This is where the proxy system’s most serious problems reside, in large part because of the back-office infrastructure of custodians, intermediaries, agents and advisors who play processing roles that reduce transparency and increase complexity and costs. The proxy system that serves street name accounts is, in the words of the Council of Institutional Investors, “prone to breakdown,” “fraught with inefficiencies and carries a too-large margin for error.”

In addition to these two categories of shareholders, we agree with the suggestion made in Commissioner Roisman’s opening comments that it is important not to overlook a third category of investors who are now functionally outside the proxy system, at least as it relates to issuers. These “ultimate investors” constitute a silent majority of the millions of individuals whose assets are invested in Exchange Traded Funds (ETFs), index funds, mutual funds, pension and retirement systems, trusts and other forms of pooled investments rather than directly in companies. The proxy system does not attempt to reach these ultimate investors except on matters relating to their investment managers.

The concept of “pass-through voting” on matters relating to issuers has long been dismissed as impractical. It is not legally mandated because voting decisions for the silent majority are delegated to the fiduciaries who make investment decisions on their

behalf. However, this hands-off approach is beginning to be questioned. In recent years stewardship codes have amplified the fiduciary standards that asset managers must meet in their oversight of portfolio companies, their governance policies and their proxy voting decisions. Even though there is currently no mandate for gathering feedback from the silent majority, the growing responsibilities of institutional investors and the availability of new technology are beginning to open the door to pass-through communications.

Consideration of these three shareholder categories -- registered investors, street name accounts and the silent majority -- gives rise to questions and suggestions that we hope the Commission will consider in determining how to restructure and improve the proxy system.

1. Can the “direct access” system serve as a model for how the proxy system as a whole should work? The original Business Roundtable Rulemaking Petition, submitted in 2010, suggested that companies could be given direct access to the names, addresses and ownership positions of street name accounts on record date, thereby eliminating the NOBO/OBO designations and bypassing the daisy chain of the central depository, brokers, banks, intermediaries and agents that are the primary source of complexity, opaqueness and cost in the current system. Is the direct access approach still under consideration by the Commission? The BRT petition also proposed privacy protections for beneficial owners through the creation of dedicated nominee accounts for individuals who do not want their identity revealed to issuers. Is this type of privacy mechanism still a viable concept? Could the Commission or the stock exchange set standards for dedicated privacy arrangements and regulate fees?

Should the Commission encourage the development of alternative, independent, fully-electronic proxy systems for use by those next-generation shareholders who choose to invest electronically and want to communicate and exercise their ownership rights electronically as well? Customers of so-called robo-brokers, who have invested their money through apps on their mobile phones or through other digital means, are now obligated to exercise their voting rights through the existing proxy system rather than through the device by which they invested. Useful lessons could be learned through the development of private sector proxy voting arrangements for this growing class of digital investors who already number in the millions. The development of alternate solutions now, while the current paper-based proxy system is still in place, could help pave the way to the digital future where stocks will be dematerialized and communications and voting will be electronic.

2. Should the silent majority be given an opportunity to exercise their voice, albeit outside the proxy system as it relates to issuers? A case can be made that investors who delegate stock picking and proxy voting decisions to third-party professionals, while having no standing to vote at shareholder meetings, should have some means to voluntarily inform their fiduciaries about their views on issues affecting their

investments. Indeed, both academics and regulators have recently raised questions about: (i) concentration and common ownership of stocks by index funds; and (ii) the exercise of voting power by ETFs without reference to the views of ultimate owners in managed accounts. These concerns combined with the growing popularity of collective investment vehicles will sooner or later give rise to private sector mechanisms for informal pass-through referendums on ETF's and indexers' voting policies. Pressure for such feedback mechanisms will surely increase as environmental and social concerns, shareholder activism and risk oversight feature more prominently in public discussions about corporate purpose and boardroom accountability.

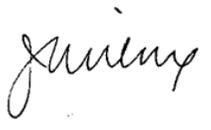
**Accuracy and accountability.** The failures of the proxy system have traditionally been blamed on back-office complexities and inefficiencies. For example, the practice of stock lending is cited as one of the reasons for the proxy system's inability to produce accurate voting positions. The loaned stock problem is in turn traced back to underlying systems for trading, clearance and settlement, whose features are in turn rooted in long-ago decisions to immobilize securities in a central depository rather than dematerialize them. This lengthy chain of interlocking systemic issues has often discouraged short-term fixes because of the perceived need to first address comprehensive reform of the underpinnings of Wall Street. Traceable shares and blockchain technology are the most frequently mentioned long-term solutions.

The question we ask: If existing back office systems can produce results for corporate actions that are accurate to the penny, why can't they do the same for record date share positions and proxy vote tabulation? Many participants at the roundtable cited the need for pre-reconciliation of the records used during the course of a proxy solicitation. If records can be reconciled to produce accurate results in tender and exchange offers, dividend payments, mergers and other transactions where money is at stake, why not at shareholder meetings where votes are at stake? Is the difference between corporate actions and proxy processing a matter of commitment, resources and cost, or is there something fundamental about the records and procedures used in share voting that differs from those used for corporate actions?

These are questions that the Commission is best positioned to answer. If, as is likely, the difference is a matter of resources and economics, the Commission should have no difficulty conducting an analysis of the differences and calculating the costs and benefits of upgrading the proxy system to meet the standards applied to corporate actions. A cost-benefit analysis should include not only the direct costs, such as agency and processing fees and postage, but also the substantial indirect costs to corporations and the investing public that arise from the proxy system's problems and failures. The benefits that would accrue from an efficient and accurate proxy system should also be calculated. These would include more effective engagement between companies and owners, reduced confrontation and a shared focus on long-term value creation.

Morrow Sodali asks these questions in the hope of stimulating new ways to think about improving the proxy system. During the past decade there have been profound changes in corporate governance, shareholder rights and corporate responsibility that have brought greater attention to share voting and the proxy process. These changes continue to accelerate. It is fair to say that the importance of shareholder votes is now on a par with shareholder dollars. As a result, reform of the proxy process is critical to the continued success of our capital market system.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "John C. Wilcox", enclosed within a thin black rectangular border.

John C. Wilcox  
Chairman