Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE Washington, DC 20549-0609

October 18, 2010

Via e-mail to: rule-comments@sec.gov

Subject: DF Title IX - Executive Compensation – voting by brokers (and)
Subject: S7-14-10 - U.S. Proxy Voting System

Dear Ms. Murphy:

By way of background, I am an individual investor and frequent commentator on corporate governance matters. Since 1995, I have published one of the Internet's most comprehensive sites on the subject at http://corpgov.net, getting as many as 700,000 "hits" a month. The site has resulted in dialog and cooperative initiatives with pension funds, corporate directors, labor leaders, proxy advisors, money managers, authors, academics, and hundreds of individual investors.

A 1998 *Pensions & Investments* article credited CorpGov.net with being "huge" in "helping shareholders win increasing control over America's corporate boardrooms."[1] My 2002 petition with Les Greenberg "re-energized" the debate over shareowner access to the proxy with respect to nominating corporate directors, according to the Council of Institutional Investors.[2] I was named in 2010 by Directorship 100[3] on a "short list of movers and shakers who merit serious attention as potential boardroom influentials… who, by virtue of what they do and how they do it, bear watching."

This letter responds to the SEC's request for comments with respect to regulations needed because of the enactment of H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), and because of issues raised in the SEC's Concept Release on the U.S. Proxy System (File Number S7-14-10).

With regard to Dodd-Frank, I offer comments here on the following provision:

SEC. 957. VOTING BY BROKERS amended section 6(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(b)) as follows:

[1] Internet Helps Link Shareholders, http://www.pionline.com/apps/pbcs.dll/article?AID=/19980727/PRINTSUB/807270732/1031/TOC
[2] http:/www.concernedshareholders.com/CalPERS_EqualAccess.pdf
[3] http://www.directorship.com/media/2010/09/2010-DIRECTORSHIP-100.pdf

(1) in paragraph (9)— (A) in subparagraph (A), by redesignating clauses (i) through (v) as subclauses (I) through (V), respectively, and adjusting the margins accordingly;
(B) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively, and adjusting the margins accordingly;
(C) by inserting ‘‘(A)’’ after ‘‘(9)’’; and
(D) in the matter immediately following clause (iv), as so redesignated, by striking ‘‘As used’’ and inserting the following: ‘‘(B) As used’’. (2) by adding at the end the following: ‘‘(10)(A) The rules of the exchange prohibit any member that is not the beneficial owner of a security registered under section 12 from granting a proxy to vote the security in connection with a shareholder vote described in subparagraph (B), unless the beneficial owner of the security has instructed the member to vote the proxy in accordance with the voting instructions of the beneficial owner.
‘‘(B) A shareholder vote described in this subparagraph is a shareholder vote with respect to the election of a member H. R. 4173—532 of the board of directors of an issuer, executive compensation, or any other significant matter, as determined by the Commission, by rule, and does not include a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80b–1 et seq.).
‘‘(C) Nothing in this paragraph shall be construed to prohibit a national securities exchange from prohibiting a member that is not the beneficial owner of a security registered under section 12 from granting a proxy to vote the security in connection with a shareholder vote not described in subparagraph (A).’’

The pertinent provisions appear to prohibit members of national securities exchanges from voting on behalf of beneficial owners on directors, executive compensation, or “any other significant matter, as determined by the Commission.” It would make little sense to prohibit brokers from voting uninstructed shares, but, at the same time, continue to allow companies the ability to vote on matters where the shareowner has failed to indicate his or her choice.

The real issue here is conducting votes that reflect shareowner intent. Congress’ objective in enacting Section 957 should logically be seen as extending to blank votes. The intent appears clear; if beneficial owners fail to provide instructions on how their proxies should be marked with respect to “significant” matters, no one should be empowered to vote on their behalf.

It would appear from the bill’s language that the prohibition already overrides provisions of SEC Rule 14a-4(b)(1) that “a proxy may confer discretionary authority with respect to matters as to which a choice is not specified by the beneficial owner or security holder.” At least it appears to clearly override granting such discretionary authority for votes on directors and executive compensation to brokers.

The SEC should use its rulemaking powers, not only to conform the provisions of Rule 14a-4(b)(1) to the mandate and the implied intent of Dodd-Frank but should also make a determination that *all* proxy matters are “significant.” All votes for all matters should only

be cast in a manner as instructed by beneficial owners. Non-votes should not be counted as “for” or “against,” since they are obvious abstentions.

Who can say even selection of auditors is routine after Andersen’s involvement in Enron? Andersen struggled to balance the need to maintain its faithfulness to accounting standards with its clients' desire to maximize profits, as reflected in quarterly earnings reports. Although the Supreme Court of the United States unanimously reversed Andersen's conviction because of vague jury instructions, Andersen was also alleged to have been involved in the fraudulent accounting and auditing of Sunbeam Products, Waste Management, Inc., Asia Pulp & Paper, and the Baptist Foundation of Arizona, WorldCom, as well as others. There are over 100 civil suits pending against the firm related to its audits of Enron and other companies.

For the past three years, 99% of votes have been in support of auditor-ratification proposals for companies in the Russell 3000 Index that held shareholder meetings between January and mid-March, according to RiskMetrics. Nearly two years ago, a Department of Treasury advisory committee suggested that more companies have their shareholders vote on auditors, as a way to keep audit committees more accountable to their oversight duties.[4]

During this year's proxy season, 66% of companies held such a vote, compared with 52.9% in 2009, according to data compiled by the RiskMetrics. However, how do such votes keep audit committees more accountable if broker votes and blank votes tip the scales and override actual votes by shareowners?

Additionally, broker votes allowed on *any* issue deny shareowners the ability to withhold their proxy, a possibly important strategy where shareowners believe the process being followed is illegitimate. The possibility of such an action was raised at Intel in late 2009 when they proposed holding a virtual-only annual meeting.[5]

To resolve these issues, the SEC should amend Rule 14a-4(b)(1) to remove the provision that confers discretionary authority on matters where choice has not been specified by the security holder or beneficial owner, should explicitly extend such prohibition of discretionary authority to companies where beneficial owners fail to provide instructions, and should make similar amendments to other rules that may provide such authority.

This letter also comments on the SEC’s Concept Release on the U.S. Proxy System, specifically the following parts of that Release:

II. The Current Proxy Distribution and Voting Process
C. Proxy Voting Process

[4] More Shareholder Say on Auditors, CFO, June 25, 2010, at http://www.cfo.com/article.cfm/14506813

[5] Guest Commentary From Glyn Holton: Emergency at Intel, CorpGov.net, 12/29/2009, at http://corpgov.net/wordpress/?p=466

III. Accuracy, Transparency, and Efficiency of the Voting Process

B. Vote Confirmation, Request for Comment. To what extent do investors believe that their votes have not been accurately transmitted or tabulated, and what is the basis for such belief?

IV. Communications and Shareholder Participation

A. Issuer Communications with Shareholders

3. Request for Comment – Do the format and layout of proxy cards and VIF appropriately set out the consequences of not voting or giving voting instructions on one or more specific matters?

The following table indicates two specific examples of shareholders being injured by the current system:

SEC Rule	How Owner Rights are Violated
1. Rule 14a-4(b)(1) specifies that when the security holder does not specify a choice, a proxy may confer discretionary authority "provided that the form of proxy states in bold-face type how it is intended to vote the shares represented by the proxy in each such case."	Broadridge claims they don't have to follow these rules required for proxies because they use a voter instruction form (VIF), not a proxy. Instead of highlighting each ignored item in bold as now being voted per management or the soliciting committee, ProxyVote places an asterisk in small type next to the item. Then, it uses a single note (*No vote entered. Your vote will be cast as recommended by the soliciting committee.) in small type and, again, this single note is not in bold as appears to be required.
2. Rule 14a-4(a)(3) states the proxy "shall identify clearly and impartially each separate matter intended to be acted upon, whether or not related to or conditioned on the approval of other matters, and whether proposed by the registrant or by security holders."	Again, Broadridge claims VIFs don't have to follow rules required for proxies. Broadridge can simply reference “a shareholder proposal described in the proxy statement,” rather than clearly describing the resolution, as is required for proxies. See http://corpgov.net/wordpress/?p=365 and http://investorsagainstgenocide.net/2009- 1012 Problems with voting at American Funds.pdf. Retail shareowners getting VIFs should have the same rights as registered owners getting proxies.

The issue of blank votes was previously discussed in my May 15, 2009 petition to the SEC to amend Rule 14a-4(b)(1). I incorporate those arguments here by reference to File 4-583.[6] In that petition, as above in my comments relative to Dodd-Frank, I argue the SEC should amend Rule 14a-4(b)(1) to prohibit conferring discretionary authority to issuers with respect to non-votes on the voter information form or proxy.

In this section I address the need for Voting Instruction Forms (VIFs) to meet the same standards as proxies.

As mentioned in my May 15, 2009 petition, Broadridge's ProxyVote.com[7] appears to fall short of full compliance with SEC regulations with regard to notifying the voter being solicited as to how blank votes are counted. (See also, item 1 in the table above.)

According to a Broadridge representative, beneficial owners who use ProxyVote.com are communicating voting instructions to their bank/broker—they are not voting a proxy.

[6] http://www.sec.gov/rules/petitions/2009/petn4-583.pdf

[7] https://east.proxyvote.com/pv/web.do

SEC Rule 14a-4(b)(1) pertains to “forms of proxy,” not voting instructions. The requirement about displaying language in bold-face pertains to a “form of proxy, not a voting instruction.” The voting instruction form (VIF) doesn’t comply with rules regulating the ”form of proxy” because the VIF is not a proxy. However, subdivision (1) refers to the "person solicited" and the need to afford them opportunity to specify their choices. The person being solicited is the beneficial shareowner. Unless those rules apply, shareowners cannot be reasonably sure what the consequences of leaving blank items is or that their votes are counted accurately, according to their intentions.

The fact that VIFs are not a proxies is merely a legal artifact of the proxy system as it developed over time. For all practical purposes, VIFs play the role of proxies, so the Commission should move immediately to amend Rule 14a-4(b)(1) to ensure shareowners receiving VIFs are explicitly afforded the same voting rights as those receiving a proxy.

When a shareowner casts a blank vote, it should be counted as cast. The integrity of the proxy voting system demands it. Items left blank should be counted as abstentions. Those voting electronically should be warned of each skipped item. Non-votes, like more clearly indicated votes, should not be changed to reflect the voting preferences or recommendations of brokers, bankers, management, board or the soliciting committee, since these parties may have interests not fully aligned with those of the shareowners voting. The same principle should apply to all items on the proxy, including votes for directors, auditors, as well as company and shareowner proposals.

When we vote in civic elections, a governing body doesn’t fill in our non-votes. If we have not formed an opinion, sometimes we defer to what we hope are more informed voters. That does not mean we want someone to step in and cast our vote for us. We simply trust in the intelligence of others who do have the right to vote and who exercise that right. Why should our votes in corporate elections be different in this regard?

Biased counting is having a real impact. Unfortunately, it did not end when broker voting ended. The impact of granting discretionary authority to vote non-votes continues to tip the voting scales. As mentioned in my petition, Ray T. Chevedden's proposal to allow 10% shareowners to call a special meeting lost by 0.3% of the vote at Bank of America. Without the biased count, it may have won.

Now I would like to discuss another consequence of not giving VIFs equal treatment to a proxy. (See item 2 in the table above.)

SEC Rule 14a-4(a)(3) states the proxy “shall identify clearly and impartially each separate matter intended to be acted upon, whether or not related to or conditioned on the approval of other matters, and whether proposed by the registrant or by security holders.” Again, Broadridge claims they don’t have to follow the rules required for proxies because they use a Voter Information Form (VIF), not a legal proxy.

As I discussed more thoroughly in two blog posts ("Corrected" Ballot at Altrea Tips Votes to Management,[8] 4/12/2010 and Abusive Practices Continue as VIFs Tilt Voting in Favor of Management,[9] 4/2/2010) John Chevedden submitted a proposal to Altera, asking them to end supermajority voting requirements. His resolved language read as follows:

> Shareholders request that our board take the steps necessary so that each shareholder voting requirement in our charter and bylaws, that calls for a greater than simple majority vote, be changed to a majority of the votes cast for and against the proposal in compliance with applicable laws. This includes each 80% supermajority provision in our charter and bylaws.

Broadridge "made a mistake" and represented the proposal on the VIF, which most retail shareowners got, as follows:

> TO CONSIDER A STOCKHOLDER PROPOSAL REQUESTING THAT BOARD TAKE THE STEPS NECESSARY SO THAT EACH STOCKHOLDER VOTING REQUIREMENT IN ALTERA S CERTIFICATE OF INCORPORATION.

In an April 1, 2010,[10] letter to the SEC and Altera, Chevedden complained that voting would not be accurate with such a description of his resolution. On April 2nd, I posted the previously mentioned article entitled Abusive Practices Continue as VIFs Tilt Voting in Favor of Management and urged readers to bring this abusive practice to the attention of the SEC's Investor Advisory Committee through use of their online comment form.

On April 9th, I heard that Broadridge had acknowledged the error and was sending out a corrected VIF. I was able to confirm this with a Broadridge representative. However, later that day I received an e-mail from John Chevedden with the "corrected" ballot language that appeared on the new VIF. The ballot language now read as follows:

> A STOCKHOLDER PROPOSAL REQUESTS A CHANGE TO ALTERA'S VOTING REQUIREMENTS, SEE PROXY STATEMENT FOR FURTHER DETAILS.

I was told that Broadridge uses this general language when they can't easily summarize a shareowner proposal. I would like to give Broadridge the benefit of the doubt and call the first translation an error, but it is hard to believe they couldn't easily summarize the shareowner proposal even on their second attempt when it was brought to their attention how they had butchered the ballot statement for a proposal to eliminate supermajority requirements. Anyone vaguely familiar with the issue could have easily summarized the proposal as "Eliminate supermajority voting provisions."

---

[8] http://corpgov.net/wordpress/?p=1372
[9] http://corpgov.net/wordpress/?p=1290
[10] http://corpgov.net/wordpress/wp-content/uploads/2010/04/CheveddenToSECreAltera4-1-2010.pdf

There have been dozens of submissions of this proposal, so it is hard to believe that Broadridge can't figure out how to abbreviate the resolution for the VIF. Way back on 7/20/2007, the RiskMetrics Group Governance Blog posted an article entitled, Strong Support for Defense Limits,[11] which included the following:

> Investor support remained high for proposals that ask companies to eliminate supermajority requirements to approve bylaw changes and other matters. These resolutions have averaged 67.2 percent across 21 meetings, about the same as the 2006 average of 67.8 percent.

Are we really to believe that Broadridge can't easily figure out how to abbreviate a resolution to eliminate supermajority requirements… essentially the same resolution that has been submitted for years and years to dozens and dozens of companies… even after it has been brought to their attention that the resolution involves ending supermajority requirements?

Referring shareowners back to the proxy statement, as Broadridge did in their "corrected" ballot, essentially disenfranchises shareowners. Most will conclude the opportunity cost of going to the proxy to read the language probably far exceeds the expected benefit of an informed vote. Most will rationally remain uninformed and leave that item blank. Of course, if they do leave that item blank, the proxy will then be automatically changed and counted as a vote in favor of the position taken by the company's soliciting committee… as a vote *against* the shareowner proposal.

Isn't it interesting how the inability of Broadridge to "clearly and impartially" identify "each separate matter intended to be acted upon," as required by SEC Rule 14a-4(a)(3) for proxies, works in management's favor? Broadridge has seen proposals to end supermajority requirements over and over again for years, but they are still not sure how to abbreviate such proposals for the VIF.

Their avowed inability to understand a simple straight-forward proposal means many more shareowners will leave that item blank. Since Rule 14a-4(b)(1) allows blanks to be filled in as recommending by the company's proxy soliciting committee, Broadridge's apparent ineptitude works in favor of management. And isn't it becoming difficult to believe these errors are truly simple mistakes?

Although it is important that VIFs be required to meet the applicable rules governing proxies, I would not want to hinder the ability of shareowners to assign their proxies by separate agreement to third parties, either outright, through Advance Voting Instructions or through an open form of Client Directed Voting. See my comment letter to the SEC of July 16, 2010[12] for a full explanation of these concerns.

---

[11] http://blog.riskmetrics.com/gov/2007/07/strong-support-for-defense-limitssubmitted-by-l-reed-walton-staff-writer.html

[12] http://www.sec.gov/comments/s7-14-10/s71410-13.pdf

In conclusion, the SEC should rule that all requirements for proxy statements, such as Rule 14a-4(a)(3), also apply to VIFs, with the exception of explicit assignments to third parties. Additionally, the SEC should move to amend Rule 14a-4(b)(1) so that blank votes are counted as blank votes, not as votes in favor of the position taken by the company's soliciting committee. Do away with the fiction that that some items on the proxy are not "significant."

The Dodd-Frank bill provided clarification of intent and SEC authority. Votes should reflect shareowner intent. Congress' objective in enacting Section 957 should logically be seen as extending to blank votes. If beneficial owners fail to provide instructions on how their proxies should be marked with respect to "significant" matters, no one should be empowered to vote on their behalf. Let's put an end to what essentially amounts to rigged voting in corporate elections.

In response to the issues raised by the SEC's Concept Release on the U.S. Proxy System. The current system, which appears to allow VIFs to be handled differently than proxies, fails on any reasonable measure of accuracy, transparency, and efficiency of the voting process. VIFs not only fail to set out the consequences of not voting or giving voting instructions on one or more specific matters, they also appear to allow Broadridge to obfuscate the subject matter of proxy issues in order to dissuade shareowners from voting so their blank votes will go to management. This aspect of the system is not only inaccurate, opaque and inefficient, it is also unfair and undemocratic.

In conclusion, I recommend Rule 14a-4 be amended as follows:

(a) The form of proxy, including voting instruction forms
...
(3) Shall identify clearly and impartially each separate matter intended to be acted upon, whether or not related to or conditioned on the approval of other matters, and whether proposed by the registrant or by security holders. ~~No reference need be made, however, to proposals as to which discretionary authority is conferred pursuant to paragraph (c) of this section.~~

(b)(1) Means shall be provided in the voting instruction form and proxy whereby the person solicited is afforded an opportunity to specify by boxes a choice between approval or disapproval of, or abstention with respect to each separate matter referred to therein as intended to be acted upon, other than elections to office. Neither a voting instruction form nor ~~A~~ a proxy may confer discretionary authority with respect to matters as to which a choice is not specified by the beneficial owner or security holder~~, provided that the form of proxy states in boldface type how it is intended to vote the shares represented by the proxy in each such case.~~ When votes are cast and fields are left blank, the beneficial owner or security holder shall be deemed to have abstained on those matters. Furthermore, when votes are cast using an electronic platform a subsequent screen, before final submission, must warn the security holder in large-font boldface red type that each field left blank will be treated as an abstention, and that no vote will be cast on their behalf regarding those matters. Nothing in this paragraph shall

be construed to prohibit a security holder or beneficial owner from explicitly assigning their proxy to a third party.

…

Delete subdivision (c) ~~A proxy may confer discretionary authority to vote on any of the following matters:~~

The integrity of the voting system is critical. The SEC's current rule sends the wrong message to shareowners. It says, "don't worry about voting. If you leave an item blank, we will allow that vote to be assigned to someone else," regardless of possible conflicting or nonaligned interests of brokers, banks and corporate management. The current rule does not reinforce a robust market or vigilance by shareowners. It does not send a message that voting is important. Share*owners* then become share*holders*, without responsibilities, much like gamblers with betting slips. The Commission should encourage responsible *ownership*, not gambling.

The SEC should regulate the power relationships between actors in the market to provide a level playing field, not tip the balance to one party when the other fails to act. Instead, the SEC should remind each party of the importance of their respective roles. The current Rule 14a-4(b)(1) misaligns interests by yielding disproportionate control to brokers, bankers, managers and boards, instead of educating and engaging shareowners.

Please adopt the requested amendments and do not hesitate to contact me concerning this request to provide clarification, additional examples, etc.

Sincerely,

James McRitchie, Publisher Corporate Governance (CorpGov.net)
9295 Yorkship Court Elk Grove, CA 95758