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VIA ELECTRONIC SUBMISSION AND OVERNIGHT MAIL

October 20, 2010

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

RE: Release Nos. 34-62495, IA-3052, IC-29340; File No. S7-14-10
Concept Release on the U.S. Proxy System

Dear Ms. Murphy:

Overstock.com appreciates this opportunity to comment on the Securities Exchange and Commission's Concept Release on the U.S. Proxy System. We applaud the SEC for drafting a thorough overview of the proxy processing system and related issues, and for asking thoughtful questions. Other commenters have provided careful technical responses to those questions. We agree with many of the proposed reforms, particularly those that address the problem of over-voting and vote tabulation¹. In addition, we offer the following comments and observations:

- An important source of inaccuracy in the proxy voting system is persistent trade settlement failures. These settlement failures distort NOBO/OBO lists and can lead to over-voting.
- New rules enacted in 2008 to improve the prompt clearance and settlement of trades greatly reduced outstanding failures-to-deliver in the Continuous Net Settlements (CNS) system operated by the National Securities Clearing Corporation (NSCC). These include SEC Rule 204T and elimination of the so-called Options Market Maker Exception to SEC Regulation SHO.
- Nevertheless, daily settlement failures beyond the level normally expected for lost certificates and other unintentional causes still occur and are higher than they should be.
- On an average day in 2010, CNS failures-to-deliver were 350 million shares. Of those, 30 million were in ETFs and 18.5 million were in Russell 3000 stocks.

¹ See, e.g., comments by Thomas L. Montrone, Chairman, President & CEO, Registrar and Transfer Company, <http://sec.gov/comments/s7-14-10/s71410-59.pdf>, and white paper submitted by Computershare and Georgeson, <http://sec.gov/comments/s7-14-10/s71410-53.pdf>.

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- In 2010, daily CNS fails-to-deliver were worth, on average, \$2 billion dollars. Of that, \$1.3 billion in settlement failures were in Exchange Traded Funds (ETFs) and \$385 million were in Russell 3000 stocks.
- The daily average numbers of stocks on the Regulation SHO Threshold List is 75. Of those, 39 are ETFs and 5 are Russell 3000 stocks.

Many of the proxy reforms discussed by the SEC attempt to address downstream effects of an anachronistic net trade settlement system, one that could be fixed through a short sale pre-borrow requirement. We ask that as the Commission considers improvement to the proxy system, it again consider adopting a pre-borrow requirement for all short sales.

Sincerely,

A handwritten signature in black ink that reads "Jonathan E. Johnson III". The signature is written in a cursive style with a large initial "J" and a distinct "III" at the end.

Jonathan E. Johnson III
President

cc: The Honorable Mary L. Schapiro, Chairman, Securities and Exchange Commission
The Honorable Luis A. Aguilar, Securities and Exchange Commission
The Honorable Kathleen L. Casey, Securities and Exchange Commission
The Honorable Troy A. Paredes, Securities and Exchange Commission
The Honorable Elisse B. Walter, Securities and Exchange Commission