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October 19, 2010

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

RE: File Numbers S7-14-10 (Concept Release on the US Proxy System)

Dear Secretary Murphy:

I am writing this letter on behalf of the California State Teachers' Retirement System (CalSTRS). As you are aware, CalSTRS is the second largest public pension fund system in the United States and the largest teacher retirement system in the United States. At our fiscal year end on June 30, 2010, our assets were valued at \$130 billion and we represented 847,000 beneficiaries and plan participants. CalSTRS has long had an interest in the communication between shareholders and its portfolio companies, and in the proxy machinery that is used to maintain communication and to execute its proxy votes. The agency's concept release is comprehensive and wide ranging in nature, and the issues are interconnected so that discrete discussion of each of the questions posed by the SEC is not possible. CalSTRS intends to focus on these areas in its comments as we believe they are most germane to our portfolio concerns:

- Accuracy, transparency and efficiency of the voting process, particularly regarding vote confirmation, over or under voting by beneficial holders and securities lending and voting rights; and
- Shareholder communications, especially communications between investors, the ability of companies to contact their shareholders, concentrating on the existing NOBO/OBO distinction.

### **Vote Confirmation**

CalSTRS acknowledges that concerns over voter confirmation revolve around contested issues that have been on the increase in shareholder meetings in recent years. Although the instances of contested issues has increased, they are not reflective of the majority of shareholder meetings by any measure. Nevertheless, investors are accustomed to receiving confirmation of transactions in every other aspect of the investment market place and we believe that the integrity of the US proxy voting system will be enhanced by round-trip confirmation.

We understand that the current voting chain makes it difficult for such confirmation to be obtained by all parties in the system. For example, certain tabulators offer end-to-end confirmation to both the companies and their shareholders, but the majority of tabulators do not offer this assurance. Both the voluntary aspect of sharing voting information and the cost presents significant impediments to vote confirmation in the current landscape, but we believe that these concerns do not outweigh the concerns that investors and issuers have regarding the accuracy of the proxy voting system. We believe that the solution referred to in the Concept Release regarding the assignment of a unique identifying code to all beneficial owners merits further review. CalSTRS prefers a market solution, but is not opposed to regulation that would require the sharing of the information necessary to effect vote confirmation.

Under Delaware law, a company is required to only recognize votes from the legal record owner of the company's stock or that person's proxy. *See Len v. Fuller*, No. CIV. A. 15352, 1997 WL 305833, at \*3 (Del.Ch. May 30, 1997). There appears to be no contradiction between state law and a federal regime whereby beneficial owners receive a proxy from the record owner and various intermediaries in a more transparent fashion to allow vote confirmation.

### **Over or Under Voting**

CalSTRS is not aware of any empirical data that supports the often discussed anecdotal instances of over or under voting and does not believe that it has a material impact on the proxy voting process. We believe that these concerns relate to the issue of integrity and accuracy in the voting process and that establishing a vote confirmation system would eliminate these concerns. In our view, the absence of vote confirmation is at the root of the uncertainty expressed regarding vote results. In view of the advent of majority voting and the elimination of the broker vote in uncontested director elections, the mere perception that the voting system lacks credibility, transparency and accountability is damaging in and of itself as it may reduce voter participation and create doubt concerning the outcome of elections. At a minimum, broker-dealers procedures for allocating votes should be standardized and disclosed. The addition of vote confirmation would heighten respect for the voting system and remove much of the needless complexity that overshadows it and obscures true understanding to all but a few specialized participants.

### **Securities Lending and Voting Rights**

CalSTRS has a policy to protect its voting rights that requires all shares on loan be recalled in order to execute the vote. Understandably, many institutions do not wish to take such a sweeping policy and believe that there are good reasons for not recalling loaned shares in order to vote. Voting rights on loaned shares would be more efficient if we were able to learn what matters were up for a vote sooner than the current practice. We believe that establishing the record date after the meeting notice has been distributed will enable institutions to recall shares in advance of the record date if they wish and reduce the decoupling of voting and economic interest that concerns both issuers and investors. The change will allow CalSTRS, which maintains an economic interest in the shares that it loans, to be able to vote consistent with those interests.

Delaware law currently states that a board must fix a record date not more than 60 nor less than 10 days before the date of a meeting for the purpose of determining which stockholders receive notice of a meeting. *See* 8 Del. C. 213(a). Until Delaware law was recently amended in 2009, this date was also the record date for determining which stockholders may vote at the shareholder meeting. However, recent amendments to Delaware law give companies the ability to set a second record date, on or before the meeting, to determine who is eligible to vote. The purpose of the law is to give companies an opportunity to prevent persons who held stock on the date of notice and sold prior to the date of the annual meeting from voting. In instances where companies choose a dual record date, we believe making disclosures currently required under federal regulation to persons required to receive notice of an annual meeting under state law will be sufficient to inform shareholders entitled to vote, even those who purchase their shares after the notice date, so long as such disclosures are prominently displayed in on the company's website.[1] Regardless of whether the SEC makes this change, it should require disclosure of meeting agendas prior to the record date of meetings to allow lenders of securities to recall their shares.

### **Shareholder Communications**

CalSTRS' core corporate governance policy is engagement, with both other shareholders and issuers. In the 1980s, there was a legitimate concern regarding confidentiality of votes, especially from active investment managers and CalSTRS supported the confidential ballot and the current NOBO/OBO system. The last two decades have brought enormous changes in the voting system, including the requirement that registered investment management companies disclose how they vote portfolio securities. CalSTRS supports the recommendations contained in the February 2010 study commissioned by the Council of Institutional Investors. [2] We agree that the interest of shareholders and issuers in better communication is more important than this privacy distinction, but we believe that investors who want to maintain their privacy should have that choice and the costs associated with the distinction should be borne by the investor. The move to eliminate the distinction should be phased in over a number of voting seasons, but the first and most important step is for brokers to make NOBO the default status for all customer accounts. We believe more direct communication between companies and their shareholders will enhance the ability to establish vote confirmation and to eliminate over or under voting that is discussed above.

In order to address concerns regarding uninstructed voting, CalSTRS believes that the voting instruction forms and cards distributed by intermediaries and issuers should default to "abstain" when no choices are made, instead of the current practice of being counted in favor of management. This will also enhance the integrity of the proxy voting system and alleviate concerns regarding shareholder will and vote accuracy.

Currently Rule 14a-4(b)(1) states, "A proxy may confer discretionary authority with respect to matters as to which a choice is not specified by the security holder 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."

Ms. Elizabeth M. Murphy

October 19, 2010

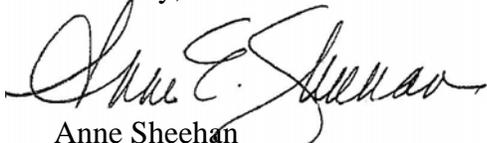
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We believe that – consistent with the elimination of broker non-votes for the election of directors, matters of executive compensation and other matters deemed significant by the SEC[3] – brokers should not be allowed to cast a vote where shareholders fail to vote on a particular item on the proxy card. We believe that failure to vote on a matter most likely reflects a voter’s intention to abstain from the vote, not give a broker discretion to vote.

I commend the Chair and the agency staff for taking on this comprehensive review of the infrastructure of the proxy voting system. Investors realize that the challenge involved with producing over a hundred rulemakings in a relatively short time frame is a resource burden for the SEC. Your demonstrated commitment to investors despite this enormous schedule of work is extremely honorable and reassuring.

Thank-you for allowing CalSTRS to comment on this singularly important Concept Release, should you desire discussion regarding this letter, please do not hesitate to contact the undersigned.

Sincerely,



Anne Sheehan  
Director of Corporate Governance

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(1) For example, Rule 14c-2(b) requires that if information statements are being distributed, they must be sent or given to shareholders entitled to vote at least 20 calendar days prior to the meeting date. In addition, proxy statements materials “must be mailed sufficiently in advance of the meeting date to allow five business days for processing by the banks and broker-dealers and an additional period to provide ample time for delivery of the material, consideration of the material by the beneficial owners, return of their voting instructions, and transmittal of the vote from the bank or broker-dealer to the tabulator.” Timely Distribution of Proxy and Other Soliciting Material, Release No. 34-33768 (Mar. 16, 1994).

(2) The OBO/NOBO Distinction in Beneficial Ownership: Implications for Shareowner Communications and Voting, by Alan L. Beller and Janet L. Fisher, available at <http://www.cii.org/UserFiles/file/CII%20White%20Paper%20Ownership%20February%202010.pdf>

(3) See Dodd-Frank Wall Street Reform and Consumer Protection Act at § 957.