Business Roundtable℠

1717 Rhode Island Avenue, NW
Suite 800
Washington, DC 20036

Telephone 202.872.1260
Facsimile 202.466.3509
Website businessroundtable.org

October 20, 2010

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

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

Dear Secretary Murphy:

This letter is submitted on behalf of Business Roundtable, an association of chief executive officers of leading corporations with a combined workforce of more than 12 million employees in the United States and nearly $6 trillion in annual revenues. We applaud the Securities and Exchange Commission (SEC or Commission) for embarking on this long-awaited consideration of various aspects of the U.S. proxy system and the thoroughness of the concept release (Release) that was issued. As the Release notes, Business Roundtable has been urging consideration of these issues since it filed a rulemaking petition with the SEC in April 2004 raising concerns about the proxy system and requesting a thorough review.[1] It now is time for the Commission to update its rules, as the Release states, "to promote greater efficiency and transparency in the system and enhance the accuracy and integrity of the shareholder vote."

We are members of the Shareholder Communication Coalition, and we support its comment letter with regard to the details of the proxy voting and shareholder communication systems responsive to the detailed questions in the Release. This letter addresses our broad concerns about the integrity of the proxy voting system, our ability to communicate with our shareholders, the role of the proxy advisory firms and the separation of voting power

---

[1] *See* Request for Rulemaking Concerning Shareholder Communications, April 12, 2004–Business Roundtable Petition 4-493 (our "2004 Rulemaking Petition").

and economic ownership. For ease of reference, our comments are divided into three sections that mirror the organization of the Release: the accuracy, transparency, and efficiency of the voting process; communications and shareholder participation; and the relationship between voting power and economic interest. References in the headings below are to the section numbers used in the Release.

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

We concur with the Commission that "recent developments…have highlighted the importance of accuracy and accountability in the voting process." While we have long noted the importance of the street name system to the efficient clearance and settlement of securities trading, we believe that advances in technology since the SEC last addressed these issues thirty years ago provide a means for more cost-effective and efficient proxy voting by, and communication with, beneficial owners who hold their stock in street name.

A. Proxy Voting by Institutional Securities Lenders [Section III.C.]

We appreciate the concerns raised by institutional investors regarding their ability to recall loaned securities in order to be able to vote at shareholder meetings. At the same time, as the Release notes, issuers listed on the New York Stock Exchange (NYSE) already are required to provide the NYSE with notice of their record and meeting dates and a description of the matters to be voted on ten days prior to the record date for the meeting, but this notice is not disseminated to the public. The most straightforward solution would appear to be to make this notice public and, if considered desirable, to extend the requirement to other companies. It would be impractical, however, to require that specific descriptions of *all* matters to be voted on be provided. As the Release acknowledges, a meeting agenda may not be finalized prior to the record date due to board deliberations or pending SEC staff review of shareholder proposal no-action requests. Accordingly, should the Commission decide to adopt such a requirement, an issuer should not be precluded from revising its meeting agenda after the record date. While this might prevent an institutional investor from voting loaned securities in limited circumstances, we believe this is outweighed by the necessity of presenting certain items for shareholder approval. It thus would be inappropriate to restrict issuers' ability to add or modify items on the notice provided to the NYSE.

B. Proxy Distribution Fees [Section III.D.]

Our comments with respect to the issues raised in this section of the Release are discussed below under "Communications and Shareholder Participation."

2. Communications and Shareholder Participation

Today, issuers have little or no control over the proxy distribution process when it comes to their street name holders. Moreover, as we and other commentators frequently have noted, the current shareholder communications process is cumbersome, circuitous and often prohibitively expensive. Thus, we believe that the Commission's "existing rules inappropriately inhibit issuers from effectively communicating with investors."

At a time when technology would permit rapid, inexpensive communication between companies and shareholders, it is detrimental to both issuers and investors to continue to rely on the system currently in place. Moreover, recent developments, including majority voting in uncontested director elections, increasing shareholder activism and revisions to NYSE Rule 452 relating to broker discretionary voting, have heightened the need for greater issuer communication with their investors. We therefore believe, as first articulated in our 2004 Rulemaking Petition, that there is a need for significant changes in the Commission's shareholder communication rules.

As an initial matter, we believe the "objecting beneficial owner" (OBO)/"non-objecting beneficial owner" (NOBO) classification should be eliminated so that issuers know the identity of their shareholders and have the opportunity to communicate with them. We believe that any privacy concerns in this context may be overstated.[2] Those investors who choose to establish nominee accounts should be able to do so, but at their own cost—the rest of an issuer's shareholders should not bear the extra cost of communicating with those wishing to remain anonymous. At the same time, the Commission should permit issuers to send proxy materials directly to beneficial owners without having to go through securities intermediaries.[3] Greater communication between companies and shareholders could lead to greater investor participation, particularly among retail investors.

In addition to the OBO/NOBO issue, we welcome the Commission's consideration of possible alternatives that would open proxy services to free market competition—potentially providing a more efficient and cost-effective way for issuers to communicate directly with their shareholders. For example, the Release discusses an alternative suggested by the Shareholder

---

[2] As the Release notes, in the United Kingdom, public companies are entitled to issue a notice requiring any person the company "knows, or has reasonable cause to believe, has an interest in its shares" to declare that interest, and also to require each party in a "chain of nominees to disclose the person for whom they are acting." UK Companies Act 2006, Section 793.

[3] Exchange Act Rule 14a-13(c) only permits issuers to send their annual reports to NOBOs.

Communication Coalition pursuant to which a single nonprofit data aggregator selected by a special committee of the NYSE in a competitive bidding process would collect beneficial owner information from securities intermediaries. The beneficial owner information would then be available to all service providers who could offer proxy distribution and tabulation services. Such separation of services would subject fees and the quality of services to competitive market forces and permit the parties paying for proxy services—issuers—to select the service providers themselves, rather than permitting intermediaries who have no incentive to negotiate lower costs for shareholders to do so.

3. The Relationship Between Voting Power and Economic Interest

A. Proxy Advisory Firms [Section V.A.]

As the Release notes, over the past twenty-five years, there has been a significant increase in the influence of proxy advisory firms. Many of our companies are substantially institutionally owned, and the recommendations of proxy advisory firms have significant influence. At some institutions, particularly medium- and small-size investment management firms, for practical purposes, the proxy voting function has been totally outsourced. As a result, at many of our companies a single proxy advisory firm controls 20-35% of the vote. Moreover, many proxy advisory firms do not evaluate the facts and circumstances of particular companies in making their recommendations. Given the significant role of proxy advisory firms and the concerns about them previously set forth by us, the New York Stock Exchange Proxy Voting Group and others, we believe that Commission regulation of proxy advisory firms in the near term is imperative. In this regard, we believe that any exemption from the proxy rules for proxy advisory firms[4] should be conditioned on their meeting the requirements discussed below. Proxy advisory firms also could be registered as investment advisers and subject to a regulatory framework under the Investment Advisers Act of 1940. As the Commission suggests, the regulation of credit rating agencies may be a useful source of guidance in developing rules for proxy advisory firms. Analytically, the positions of proxy advisory firms and credit rating agencies are very similar in that they are for-profit companies that are relied on by the market to make independent risk assessments and judgments on which market participants depend in making fundamental decisions. As a result, it would be appropriate to adopt a regulatory structure for proxy voting recommendations that is similar to that for rating credit default risk to ensure that proxy advice is provided consistently, transparently and impartially.

In order to ensure accuracy and transparency with respect to voting recommendations, the Commission should at a minimum require proxy advisory firms to publicly disclose conflicts of interest, voting errors and the data, methodology, and rationales underlying their proxy voting

---

[4] Exchange Act Rule 14a-2(b)(3).

recommendations. The Commission also should require advisory firms to disclose if they use methodologies that do not evaluate the specific facts and circumstances of each company with respect to the matters being voted on. In addition, they should be required to disclose any relationship with the proponents of shareholder proposals on which they are making voting recommendations. Furthermore, issuers must be given an adequate opportunity to comment on draft voting recommendations. We have seen too many circumstances where voting recommendations were not based on accurate facts. Moreover, proxy advisory firms should be required to disclose a company's response to their recommendations and analysis so that shareholders have complete information with which to evaluate the voting recommendations. While some proxy advisory firms provide some generic conflict of interest disclosure and some provide for very brief periods for review of draft recommendations, these are inadequate when they are provided and not all proxy advisory firms provide them, nor do they do so with respect to all issuers.

The Commission also should consider the responsibilities of investment managers that rely on proxy advisory firms. In this regard, investment managers should be required to assume greater oversight responsibility if they delegate their voting rights to proxy advisory firms. The Commission should require investment managers to carefully scrutinize the methodologies used by proxy advisory firms and disclose those methodologies as well as any voting guidelines they provide to advisory firms.

Finally, the Commission should not impose greater data-tagging requirements on issuer proxy materials (Section IV.C.) as it would primarily benefit proxy advisory firms at substantial cost to issuers. The primary beneficiary of such data-tagging would be proxy advisory firms that could automate more of their processes, while all shareholders would bear the cost. In any event, data-tagging of compensation and other information in the proxy statement is not likely to provide useful comparative data to investors given the lack of standardization in such disclosure. Further, many companies, and their financial printers, are having difficulties complying with XBRL under compressed timeframes. This problem would be exacerbated if data-tagging of proxy statements was required as it would occur in close proximity to the filing of Forms 10-K.

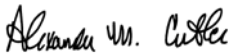
B. Voting Ownership and Economic Interest [Section V.C.]

We share the Commission's concern that hedging strategies and share lending practices that decouple voting power from economic interest require additional study. Some holders of short or hedged positions may have no interest in an increase in the share price, or may even profit from a decline in the share price. Without information about the economic interest such holders of voting power have, companies and true long position holders are unable to adjust their voting and solicitation strategies to protect the value of the company's shares. Moreover, significant decoupling could undermine investor confidence in the capital markets. Therefore,

we believe that, at a minimum, the Commission should consider requiring greater disclosure by investors who hold voting power that is decoupled from an economic interest in an issuer.

Thank you for considering our comments. Please do not hesitate to contact Larry Burton at Business Roundtable at (202) 872-1260 if we can provide you with any further information.

Sincerely,



Alexander M. Cutler
Chairman and Chief Executive Officer of Eaton Corporation
Chair, Corporate Leadership Initiative, Business Roundtable

C: Hon. Mary L. Schapiro, Chairman, U.S. Securities and Exchange Commission
Hon. Luis A. Aguilar, Commissioner
Hon. Kathleen L. Casey, Commissioner
Hon. Troy A. Paredes, Commissioner
Hon. Elisse B. Walter, Commissioner
Meredith Cross, Director, Division of Corporation Finance
Robert W. Cook, Director, Division of Trading and Markets
Henry Hu, Director, Division of Risk, Strategy, and Financial Innovation