Computershare

October 20, 2010

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

Dear Ms. Murphy,

Re: Concept Release on the U.S. Proxy System, File No. S7-14-10

Computershare and Georgeson welcome the opportunity to respond to the request for comments made by the Securities and Exchange Commission (the "Commission") in its July 14, 2010 Concept Release regarding an analysis of the U.S. proxy system. We would like to also commend the extensive effort that has been invested by the Commission in the analysis of this complex area and the preparation of the Concept Release.

Computershare is a global leader in transfer agency, employee equity plans, proxy solicitation and other specialized financial, governance and communication services. Recognized for our expertise in data management, high volume transaction processing, payments and stakeholder engagement, we help many of the world's leading organizations maximize the value of their relationships with their investors, employees and other stakeholders. Globally, we service approximately 100 million shareholder and employee accounts on behalf of 14,000 corporations including 33% of the Fortune 500, 37% of the S&P 500, 60% of the Dow 30 and thousands of small and mid-cap companies in the United States.

Georgeson, a Computershare Company, is the world's leading provider of strategic proxy and corporate governance consulting services to corporations and shareholder groups working to influence corporate strategy. Combined, Computershare and Georgeson mail over 400 million shareholder packages[1] around the world annually, including 140 million in the United States. A significant portion of these mailings are proxy materials for shareholder meetings.

Computershare and Georgeson have taken a long-standing and active interest in proxy reform, through our direct participation in the debate and also through our involvement with the Securities Transfer Association. We have worked closely with the New York Stock Exchange (the "NYSE") and, more recently, the Shareholder Communications Coalition, to identify areas of critical concern within the existing proxy system and to make recommendations on how to improve the outdated system currently in place.

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[1] Computershare Communications Services 2010 Output:

Printed Images Processed 2010:	Mail Packs Processed 2010:
Global = 1.4 billion	Global = 460 million
US = 400 million	US = 140 million
North America (including Canada) = 525 million	North America (including Canada) = 152 million

We operate at approx 50% utilization; therefore even just with current equipment and facilities we could service circa 800 million images and 280 million mail packs in the US alone. Further, we may invest in additional hardware and facilities to deliver up to 1.2 billion images and 420 million mail packs if demand necessitates greater capacity.

The recent amendment to Rule 452, coupled with the impact of relevant aspects of the Dodd-Frank legislation and the anticipated implementation of Proxy Access rules, make it even more critical that corporate issuers have the ability to identify and directly engage all of their shareholders and to communicate with them in a reliable and cost-effective manner. Yet at a time when all shareholders, including beneficial owners, should be more engaged with the proxy process and exercising their voting rights, vote returns from retail beneficial owners continues to decline.

The Concept Release examines many issues that have been raised by various parties with respect to the proxy voting system, in a systematic and comprehensive manner. Where practicable, we have addressed our response within the structure of the Concept Release. We appreciate that the Commission has placed considerable effort in the development of the Release and in the structuring of the concepts examined in it. However, bearing in mind the many points of interconnectivity between the issues and the proposed reforms that we endorse, we have first provided an overview of the key points where the system currently does not operate to the maximum benefit of issuers and their investors, and the reforms that we propose to rectify these areas of concern. We have then further addressed the detail of these issues within the format of the Concept Release. Many of these issues have also been presented in our earlier submissions to the Commission[2], and in the submissions of the Securities Transfer Association[3] and the Shareholder Communications Coalition[4].

The recent report of the NYSE Commission on Corporate Governance[5] details ten key principles of corporate governance. Principle six recognizes the importance of transparency by both corporations and investors, and the necessary interdependency of the corporation (Board and management) and shareholders in achieving good corporate governance, as follows:

> ***"Principle 6***
> ***Good corporate governance includes transparency for corporations and investors, sound disclosure policies and communication beyond disclosure through dialogue and engagement as necessary and appropriate.***
> *The Commission recognizes that transparency is a critical element of good corporate governance, and that companies should make regular efforts to ensure that they have sound disclosure policies and practices. While disclosure is the primary method of communication with shareholders, the Commission understands that, where appropriate, management or directors should engage in direct dialogue with investors on governance, performance or strategy concerns. Companies and shareholders should develop best practices to ensure that such conversations are meaningful to the participants, result in increased understanding and trust among boards, shareholders and management, and are conducted in compliance with applicable rules and regulations.* ***Investors should also be held to appropriate levels of transparency and***

[2] Computershare & Georgeson letters to the Commission: Dated March 27, 2009, regarding "*Proposed Rule Change, as modified by Amendment 4, to Amend New York Stock Exchange Rule 452 and Listed Company Manual Section 402.08, to eliminate Broker Discretionary Voting for the Election of Directors, Release No. 34-59464; File Number SR-NYSE-2006-92*"; and dated August 17th, 2009, regarding "*Facilitating Shareholder Director Nominations, File No. S7-10-09*".
[3] Letter of the Securities Transfer Association, Inc., to the Honorable Mary Shapiro, dated June 2, 2010, regarding "*Proxy Communication Fees*".
[4] Shareholder Communications Coalition dated August 17, 2009, regarding "*Facilitating Shareholder Director Nominations, File No. S7-10-09*".
[5] Report *of the New York Stock Exchange Commission on Corporate Governance*, September 23, 2010

be required to disclose holdings, including derivative or other security ownership, on a timely and equal basis, subject to the recognition that certain information relating to trading and investment strategies may be proprietary [our emphasis added].”

While the NYSE Commission on Corporate Governance did not offer any new insights on proxy mechanics, we agree that it is critical for the Securities and Exchange Commission to push forward with reform measures to give effect to some of the core corporate governance principles contained in the report. It is useful to note that the recommendations of the Shareholder Communications Coalition, which we continue to support, are not inconsistent with these broad umbrella principles set by the NYSE Commission.

Reform is urgently needed

Reform of the current proxy system is critical, to ensure the establishment of a process that provides:

1. Better Governance Outcomes
   - Transparency of share ownership and the ability for issuers to engage in direct communication with all shareholders;
   - The re-engagement of investors in the proxy voting process;

2. Process and Cost Effectiveness
   - Improved system-wide integrity of the vote by implementing processes to increase vote accuracy and auditability;
   - Reduction in complexity of the system and ability for issuers to choose service providers, yielding the creation of material cost savings.

There are three broad problems with the current system: monopolistic practices, decreased voter participation, and slower innovation than would occur in a highly competitive market:

1. A near-monopoly environment, created in part (and thereafter entrenched) by the existing regulatory framework which places the onus (but not the cost) for communication to beneficial owners on intermediaries, means that issuers have no control over or any choice in service provider or the full range of communication channels they might use to reach their shareholders; yet issuers must bear the full costs of intermediary communications. Issuers are also subjected to excessively high, non-negotiable, transaction costs for services provided by the agent chosen by the intermediary;

2. Decreased voter participation has resulted from issuers’ inability to directly communicate with a significant portion of their shareholders, due to a bifurcated market, the cost to communicate and regulatory barriers;

3. Lack of competition results in slower, sporadic innovation and reduces communication options for issuers and their investors (while elsewhere other industries are experiencing significant technological shifts that deliver greater flexibility, increased choice and lower operating costs).

These issues will not be remedied by simply engaging in incremental reforms or by merely adjusting again the regulated fees charged to issuers; the system needs to be more fundamentally reconfigured.

Background

When the current system was first introduced, in the 1970's, there were some major impediments to the type of system that we are advocating now:

1. Computerization and integrated workflow processing were not ubiquitous: the industry relied on many manual processes;

2. There were no industry standards in place for file formats or data transmission for these types of transactions;

3. Only 30% of shares were in street-name form, while 70% of shares were held in registered form (permitting direct communications between the issuer and investor);

4. Some street-name investors who held accounts at intermediaries wanted to protect their identity and did not want their details to be notified to the company they were invested in;

5. Not all intermediaries claimed reimbursement from issuers for the costs of proxy distribution;

6. There were many more transfer agents in existence than now, making the co-ordination and manual distribution of materials and the manual submission of votes by investors back to so many parties highly inefficient;

7. There was no central settlement system in operation until the establishment of the Depository Trust Company ("DTC").

Today, technology has rendered most of these issues either irrelevant or easily manageable. Viewed in this historical context, we hope the public policy interest will be clear for many more observers and commentators to understand.

1. Computerization in the securities industry is now ubiquitous. Technology is critical to the operation of the markets and its future development;

2. Industry standards are in place. This is a non-issue in the context of the proposal under consideration. Common message formats can be readily adopted by market participants. This is a critical aspect to unbundling the data aggregation function from the transactional functions that utilize that information;

3. Some 70% of shares are held in street-name form, in a system that was designed when only 30% of shares were held in that form. By contrast, direct communication between issuers and investors was easily permitted for 70% of all shares before this dramatic increase in intermediation. In this historical context, it is clear that the intermediary system has progressively disconnected the issuer and investor relationship;

4. Some street-name investors who hold accounts with intermediaries such as banks and brokers still want to protect their identity and do not want their details to be disclosed to the company they are invested in. The direct communications proposal respects this. Furthermore, technology (especially when coupled with regulation) enables privacy rights to be managed effectively without compromising the broader benefits of introducing a more open, competitive and transparent shareholder communications system;

5. Effectively all intermediaries claim reimbursement for the costs of proxy distribution, through the dominant proxy agent invoicing issuers at the maximum rate specified in the NYSE rules.

6. The top four transfer agents now provide services to 85% of registered shareholders in public companies in the US.

Today, the Depositary Trust & Clearing Corporation ("DTCC") plays a critical and pivotal role in the operations of the securities market. DTCC is the hub that connects all major market participants including brokers, banks and trust companies representing investors; with transfer and other agents representing issuers. DTCC operates a highly secure network that is responsible for supporting settlement of over a quadrillion dollars of trades[6] every year. It is a trusted and regulated party. It has the regulatory standing, technology, expertise and legal role in the intermediated ownership structure to facilitate more open and effective communications.

To ensure market competitiveness, and to ensure the market can innovate at the speed that buyers and consumers of services demand, it is critical that the Commission reconfigure the proxy system to enable direct communications between issuers and investors. The intermediary system is critical to the operation of a vibrant and liquid stock market but its design has some shortcomings. While maximizing trading and settlement efficiency, it impedes the parallel and equally important corporate governance needs – thereby diminishing the engagement that is critically needed between issuers and investors. Shareholder engagement is of critical importance to the good governance of companies and the efficient operation of the equity market.

The intermediary system represents a wall that separates issuers and their investors; this wall needs to come down.

[6] Source: *DTCC*

Today, we contend that both critical policy objectives - market infrastructure that supports a vibrant securities market on the one hand and a communications and processing infrastructure that facilitates open, transparent and effective communications environment on the other - are no longer mutually exclusive. Technology, when coupled with effective regulation, competition and innovation will deliver this.

Reforming the System

We strongly recommend that the current system be fundamentally reformed to improve the accuracy, integrity and transparency of the voting process. This can be achieved by:

1. Eliminating the distinction between OBOs and NOBOs
   - This would greatly enhance the ability of issuers to identify and communicate directly with all their shareholders equally;
   - The distinction is outdated, poorly understood by investors and acts as a substantial inhibitor to a transparent and effective proxy voting system. It does not serve the interests of the vast majority of investors yet imposes excessive costs on issuers;

2. Unbundling the key functions necessary to administer voting by beneficial owners, to optimize cost-effectiveness, transparency and auditability
   - The functions of: (1) aggregating beneficial owner data; and (2) disseminating communications to those holders, should be unbundled;
   - Beneficial owner data aggregation should be recognized as a critical central function that must be operated on behalf of all key stakeholders: issuers as well as the intermediaries. The centrality of this function necessitates that it should be performed by an independent third party "hub" that is accountable to the needs of all stakeholders in the process;
   - Issuers should be able to select a proxy distribution and communication agent of their own choosing, to distribute materials to *all* their investors, using the beneficial owner data obtained from the entity serving as the data aggregator hub as well as registered holder data from the issuer's transfer agent.

3. Transferring proxy authority to the beneficial owner directly
   - Beneficial owners should be entitled to receive the same proxy form as registered shareholders, and to directly lodge their vote with the issuer; to attend the meeting; or to sub-delegate their proxy authority to an agent to exercise on their behalf if so desired;
   - Beneficial owners should be directly enfranchised to vote their security entitlements within a secure, transparent and fully auditable process. This is not possible with the opacity of the current process, where intermediaries allocate voting rights without any obligation to reconcile votes issued to shares held at record date;
   - The use of issuer-directed, informative and plain-English proxy forms would help increase shareholder engagement by facilitating recognition of the relevant issuer that is

subject of the proxy and providing clearer communication on the vote items. In our view, this would improve vote participation by beneficial owners;

- Street-name holders would continue their direct relationship with their intermediary but would be allowed to directly exercise their voting right with the issuer.

DTCC is a logical party to undertake the role of aggregator of beneficial ownership data. Not simply because it is the operator of the settlement system and a highly secure hub connecting all parties in the financial system; it is also a logical party since DTCC holds the legal ownership of all shares in the US that are held in street-name form. Investors hold entitlements to such securities, but DTCC holds the legal ownership on the books of the issuers. Under prevailing laws, Cede & Co.[7], first receives the right to vote; these voting entitlements are delegated to brokers and banks that then canvass their clients for instructions.

The selection of a "hub" operator such as DTCC is essential to enabling direct communications between issuers and investors. We refer the Commission to the Shareholder Communications Coalition letter of August 4, 2009 which also detailed these proposed reforms.

Accuracy, Transparency and Efficiency of the Voting Process

Over-voting and Under-voting

Problems of integrity and accuracy in the current system are apparent, and have been documented in various forums, including news media reports of voting miscounts and delays in determining election results by proxy service providers. We have attached in Appendix 1 a sample of errors that have come to public attention through media commentary. The current system does not permit an independent third-party to audit and verify the results of an election, "end-to-end" (from compilation of a reconciled list of beneficial owners that are eligible to vote through to the final tabulation of votes cast at a shareholder meeting). These problems need to be addressed, as increasing investor activism and proposed regulatory changes are expected to cause many more close votes on shareholder proposals and director elections.

The NYSE Commission on Corporate Governance noted that:

> *Shareholders have a right to vote on fundamental issues relating to the corporation, including certain mergers and other proposed transactions as well as the election of directors. Shareholders have a right to expect that voting on these issues is fair, honest, accurate and transparent, and that the board and management give due weight to shareholder votes[8].*

[7] DTCC's nominee that is the registered shareholder for all securities represented in DTCC's systems.
[8] Refer note 5 above.

In our view, the lack of transparency in the current system does not permit independent verification of the "fairness, honesty or accuracy" of recording the votes of street-name holders.

In October 2010, we conducted a survey of key issuers, representing a cross-section of our client base, to obtain their opinions on the current U.S. proxy system (please refer to Appendix 2). Of the participants, 55% responded that the current 'street-name' voting system does not deliver sufficiently reliable, accurate and auditable results. Only 17% expressed faith in the current system. A clear majority of 73% agreed that a more transparent proxy system would improve the reliability, accuracy and auditability of voting results, while an overwhelming 90% believe that a competitive market environment will provide cost savings in the shareholder communications and meeting process.

Securities are most commonly held in so-called "fungible bulk" at DTCC by the intermediaries. The beneficial owner has only a pro rata property right to the securities held in bulk by the relevant intermediary for all clients that hold securities entitlements through that intermediary. Beneficial owners reasonably expect that they have a direct entitlement to the securities that are the subject of their economic investment, and entitlement to the incidents of ownership of securities, including payment of dividends and the right to vote. However, at present there is no rule that requires intermediaries to reconcile for proxy purposes the aggregate of their entitlement holders' positions to their aggregate holding of the relevant securities (most commonly through the fungible bulk position at DTCC but potentially also to their upper-tier custodian, if used). Conversely, we note that intermediaries and DTCC do reconcile four times a year for the purposes of managing dividend payments, specifically for tax credits to ensure these cannot be manufactured and over-claimed. The over-voting process should be analogous to this.

Pre and Post Reconciliation

In the Concept Release, the Commission poses questions about which method brokers should use to reconcile client positions with available proxies. Two reconciliation methods are practiced today: "pre reconciliation" and "post reconciliation". Many commentators who seek greater transparency and integrity of the voting process argue that the reconciliation should be conducted *before* proxy forms are issued, so that an eligible voter list can be made available. This is a sound and robust recommendation and we support this position.

The alternative "post reconciliation" method is held out as one that enables more shares to be voted, which supposedly benefits the company. This is a curious statement since the increase in voting is achieved by more parties being given the *capacity* to provide voting instructions, through Voter Instruction Forms ("VIFs"), than should have an *entitlement* to vote, due to an imbalance between the sum of entitlements created by an intermediary for its clients (and the intermediary's own position in the relevant securities) and the total number of securities held in the intermediary's fungible bulk position at DTCC. This imbalance arises where DTCC debits an intermediary's securities held in its fungible bulk position to satisfy its settlement obligations; but where the intermediary has not correspondingly debited the relevant entitlement positions on its broker-client systems, that should otherwise reconcile to the fungible bulk. The securities may have been used as a securities loan, or to satisfy a market settlement obligation. In most cases, the beneficial owner of the securities will not know that 'their' securities have been used in this fashion.

As the entitlement positions are not adjusted to reflect the use of the investor's securities, the "post reconciliation" method results in a VIF being sent to the investor, in addition to the party that acquired those shares receiving an entitlement to vote. How can this approach offer certainty to investors that their vote will be accepted? This approach is only feasible on the assumption that some investors will not return their vote instructions, allowing the lack of reconciliation to be hidden through the bulk position of the intermediary. Otherwise, an over-vote situation would arise. Under a securities lending arrangement, the securities may have been transferred to another party where the parcel of shares could have been bought and sold many different times.

The purchaser or purchasers of the securities (i.e. the person in possession of the securities) is entitled to vote the shares, yet the original entitlement holder still receives a VIF that they can return to their intermediary. We believe that this is not a fair or equitable structure, particularly where the acquiring investor may have different voting intentions from the original entitlement holder, whose securities have been lent or transferred, at times without their explicit knowledge. We appreciate that client agreements may permit an intermediary to use securities for lending purposes. However, our concern is with the lack of visibility to the client when this occurs – the client continues with the expectation that they are entitled to vote shares that have in fact been transferred to another party, who therefore is actually entitled to vote the shares at the record date.

It is reported that this is common practice for shares that are held in margin accounts; however, there appears to be no systemic safeguards to prevent clients' securities being used to settle obligations of the intermediary. As the securities are held at DTCC in a fungible bulk, DTCC cannot tell which securities in the fungible bulk position represent assets of clients or the firm. DTCC's role in the settlement process is to debit securities from the intermediary's fungible bulk whenever the intermediary has a settlement obligation. While intermediaries organize securities loans to cover short and arbitrage trading by their own firms or by their other clients, there appears nothing to prevent regular client securities from being used to cover the broker's settlement obligation (whether or not these represent the firm's own short positions or those of other clients). DTCC does not discriminate nor seek to understand who the intermediary's clients are. As a settlement system operator, its role is to transfer positions between system participants in settlement of their obligations to one another.

In the context of proxy reform, as an absolute minimum, broker allocation policies should be explained to their clients, so clients (in their capacity as shareholders) have a clear understanding of their legal and contractual rights. We support the recommendation of the Shareholder Communications Coalition requiring banks and brokers to conduct pre-reconciliation procedures. We also support the delegation of proxy authority directly to all beneficial owners.

Improving systemic safeguards for investors

We are surprised that the Commission has not questioned the underlying cause of vote imbalances in the concept release, and whether the practice of maintaining a fungible bulk of client and firm securities is still an appropriate structure in today's financial markets. The collapse of Lehman Brothers and the

identification of fraud such as that conducted by Bernard Madoff gave greater visibility to some of the imperfections in the current "four-tiered"[9] architecture of the US settlement system, and its lack of integrated and systemic safeguards. Safeguards that would better protect investors include: the segregation of client assets from firm assets; and the use of designated settlement accounts in the DTCC system to prevent client securities within the broker's fungible bulk from being used to cover the broker's settlement obligations, whether they are the firm's own trading obligations or obligations owed on behalf of other clients.

While we appreciate that this is a much bigger subject than proxy reform, we encourage the Commission to review this aspect of the settlement system as part of its review of market structure. Resolving this issue (i.e. separating out clients assets from broker settlement obligations, whether for the firm or other clients of the same firm) would immediately solve the over-voting situation, since the "four-tiered" architecture of the US settlement system would reconcile at all times. Under such architecture, securities could only be lent where the loan was recorded against the client's account, thus reducing the long position and ensuring that a proxy for a non-existent position would not be issued.

In other major international markets where we operate, such as the United Kingdom, there is a clear requirement to segregate client and firm assets in the central settlement system. The settlement system also enables intermediaries to segregate client and firm assets from its designated "settlement account", from which the central settlement system operator will debit or credit securities in the course of the settlement process. This is the converse to the operation of a single fungible bulk of securities, where DTCC will debit securities from the fungible bulk (without regard to who the underlying owner of the entitlement to those securities is) to effect settlement of a market transaction undertaken by the broker.

Investor protection can be enhanced by using such segregation processes. The reforms recommended to improve the proxy system will take one small step towards this, with proxies being issued by the agent of the issuer based on the pre-mailing reconciled eligible voter list. Under this arrangement, any shareholder that does not receive a proxy will have good reason to discuss the matter with their intermediary. Importantly, the integrity of the system will be beyond question. (This may be one reason why there is resistance to direct communications between issuers and their street-name

[9] The “four-tiered architecture” is the hierarchy of relationships between the register (tier 1); registered shareholders, including the registered holding of Cede & Co. (tier 2); the DTCC participants' accounts (sometimes referred to as a "fungible bulk"), where DTCC records ownership rights of individual intermediaries (tier 3); and then the separate databases maintained by each intermediary of their respective client holdings (tier 4). Under this four tiered architecture, there are no independent systematic controls that ensure that the total assets held for clients collectively by all intermediaries reconciles vertically up and down the four tiers in the hierarchy of ownership. This lack of central control means that there can be more security entitlements recorded in the intermediaries’ databases than exists within Cede & Co.'s holding of actual securities on the register of shareholders of the company. Various reasons for this imbalance were discussed in our section on “Pre and Post Reconciliation”.

investors, as it will create transparency in respect of an allocation process which today is completely opaque.)

While it has been argued by some commentators that the "pre reconciliation" approach would reduce the retail vote participation, and is expensive, we would strongly urge the Commission to consider the key policy considerations here. Integrity of the system demands that voting rights be allocated to the party that is entitled to exercise them. Inefficiencies in the voting process, and particularly situations such as over-voting, are at least partially created by an underlying lack of visibility and certainty in entitlement positions between investors and their intermediaries. Furthermore, any potential reduction in voting returns due to a "pre reconciliation" approach under our proposed reforms would be remediated by the benefits of direct communication with the issuer that we have detailed in this response, which we believe will increase retail street-name holder vote participation. These reforms will necessitate a general outreach and education strategy which will also facilitate re-engaging retail investors.

Intermediaries must be subjected to an affirmative obligation to reconcile their positions at record date to ensure integrity in the whole chain of security ownership; to ensure that the rights of share ownership are passed to, and able to be exercised by the relevant entitlement holder; and to enable the creation of a reconciled and auditable list of eligible voters. Voting is a key mechanism for investors to exercise their ownership rights over a public company, and is critical to effective and responsive corporate governance. It is wholly appropriate and necessary that intermediaries be required to reconcile their entitlement positions at record date, to ensure that the appropriate owner of securities is given the right to vote.

Recommended Reforms

The system of shareholder voting must support a robust process that is accurate and efficient. It is equally important that the integrity of the system is *evident* to all stakeholders, to ensure confidence in the outcomes of the voting process. In an environment of increasing investor activism and close vote outcomes, reform is essential to ensure that the system is significantly more transparent than at present and that it is subject to systemic controls to ensure accuracy in the complete vote process. All stakeholders, most particularly the issuers and their investors, require confidence that voting rights are being properly allocated, and that voting results are accurate. The current system does not deliver this.

To address these concerns, we urge the Commission to implement the following requirements:

- The categories of Non-Objecting Beneficial Owner ("NOBO") and Objecting Beneficial Owner ("OBO") should be eliminated. The impact of this on issues of confidentiality of investor information are addressed further in relation to shareholder communications, under our section on "Issuer Communications with Shareholders";
- Brokers and other financial intermediaries should be required to produce an"eligible voters" list as of the record date for each shareholder meeting, to an independent hub which aggregates beneficial owner data. Reconciliation to their fungible bulk position at DTCC should occur before an intermediary transmits record date beneficial owner information to the data aggregator and before proxy forms are mailed to beneficial owners and registered shareholders.
- Proxy authority should be transferred by the intermediaries, who received authority from DTCC, to **each** beneficial owner, as of the record date established for a shareholder meeting, through the same omnibus proxy process that is currently employed by DTCC.
    - Transferring the proxy authority to the beneficial owners is consistent with state law requiring voting authority to be exercised by the registered holder, by creating the same

chain of voting authority traceable to the legal holder (Cede & Co., controlled and managed by DTCC) currently accepted on a universal basis where the omnibus proxy is provided to the banks and brokers. Thus, the legal structure is the same; however the beneficial owner is directly enfranchised to exercise their voting right rather than continuing to be intermediated.

- The NYSE and Commission rules requiring intermediaries to disseminate proxy materials to their entitlement holders should be amended to instead permit the issuer to direct the distribution of proxy materials (through their selected service provider), to the entitlement holders identified on the eligible voters list.
- The issuer's appointed agent should produce a certified "eligible voters" list, combining the beneficial owners and the registered investors in the issuer. In lieu of a VIF (which can only be executed through the custodian or their agent), all eligible voters should be sent a proxy card, containing the issuer's branding to facilitate identification and the issuer's content, that can be voted directly with the tabulator.
  - This method would provide for efficient tracking and auditing of individual voting instructions, and would ensure an accurate result.
- The beneficial owner should be permitted to delegate their voting authority to their intermediary, or another nominated third party such as a voting agent. This should occur at the election of the investor and through their contractual arrangements with their intermediary.
- The regulatory structure should incorporate a "deeming provision" for consents, such that e-communications consents (received by intermediaries for the provision of electronic communications) and house-holding instructions are deemed to extend to the issuer *for the purposes only of shareholder communications*, allowing investors' email addresses and house-holding preferences to be included in the data provided to the data aggregator.

Vote Confirmation

A transparent system will also enable the provision of vote confirmations upon request, to any investor, as the tabulator will be able to verify the vote lodged against the "eligible voters" list. Institutional investors, who are subject to various compliance requirements regarding their proxy voting activities, have been keenly interested in a vote confirmation system for almost two decades. However, even in that situation, *there is no mechanism for an issuer to determine whether the votes submitted accurately reflect the actual instructions of their shareholders*. The opacity of the current system does not permit issuers to trace a beneficial owner's vote instruction, communicated to its intermediary's agent, to the vote lodged against the registered share position of Cede & Co.

In principle, we see no reason why vote confirmations cannot be made available to investors either in today's system or in the direct communication structure that we propose. However, under the current system, neither the issuer nor any beneficial owner will have access to the same transparent and independently verifiable confirmation that the beneficial owner's vote instruction has been lodged at the shareholder meeting as directed. This is an inevitable facet of the current structure where an investor's securities are generally held in the intermediary's fungible bulk at DTCC. The Cede & Co. position is recognized under state law as the registered shareholding eligible to vote at the shareholder meeting. A vote instruction provided by a beneficial owner follows the chain of intermediation. Neither the issuer nor

the beneficial owner can therefore trace their instruction through these various pooling processes, from vote instruction through to the vote lodged on behalf of Cede & Co.

The present structure means inevitably that only Broadridge, with its connectivity to the substantial majority of all intermediaries' systems, can trace this voting chain. Moreover, Broadridge can only provide vote confirmations where it also acts as the tabulator for the issuer, and thus can confirm the final vote lodgment for Cede & Co. By contrast, under the direct communications structure that we propose the transparency of the system, the interposition of the data aggregation hub and delegation of proxy authority to the beneficial owner will enable any tabulation agent appointed by the issuer to provide confirmation back to investors that their vote instruction has been recorded[10]. This would be accomplished by assigning a unique identification number to each shareholder record processed by the hub. Investors could then utilize this number to query the tabulator and/or the hub to determine the status of their vote. Currently, any investor seeking confirmation from Broadridge would have to make their request through their custodian unless they are a subscriber to Broadridge's *ProxyEdge* service.

To require vote confirmation to be made available within the current structure will again simply provide further regulatory entrenchment of the monopolistic position of a commercial service provider, without making the voting process any more transparent or independently verifiable.

Proxy Distribution Fees

In the current monopolistic[11] environment, where Broadridge predominantly controls the data aggregation and distribution processes, no direct correlation exists between the fees charged and the actual costs of providing proxy services. The current fee structure no longer reflects reasonable reimbursement of expenses borne by brokers, resulting in issuers being subjected to excessive costs that are specified by regulators.

The fee issue extends far beyond the basic question of what is the "appropriate" level of fees. We are strongly of the belief that the very concept of setting regulated fees for the provision of commercial services is highly inappropriate. Regulators should not be placed in a position of having to determine appropriate fees for the provision of commercial services, unless a market-based system cannot be established. The Commission has long called for the establishment of a competitive market for proxy distribution services[12].

There is an inherent tension in a structure where issuers bear responsibility to pay for the costs of communications, and intermediaries control the process of communications but outsource that process primarily to one service provider. This tension might be temporarily alleviated by periodic reviews of the fee structure, but it is never wholly removed. **The system must be reformed to allow competitive market forces to drive the fees that issuers pay, to the greatest extent possible**.

Although the current NYSE-regulated fees are expressed as a "maximum" rate, in reality the maximum fees have been implemented as prescribed fees. The theoretical ability for issuers to negotiate reduced

[10] The vote confirmation will be available even if the beneficial owner elects to hold through a nominee to preserve anonymity from the issuer.

[11] We appreciate that a small number of entities, in addition to Broadridge, do offer proxy services to intermediaries. However, Broadridge processes over 99% of beneficial owner volumes, giving it a more than dominant market position and allowing it to exercise monopolistic control.

[12] For example, we refer to the *Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Amending Its Rules Regarding the Transmission of Proxy and Other Shareholder Communication Material and the Proxy Reimbursement Guidelines Set Forth In Those Rules, and Requesting Permanent Approval of the Amended Proxy Reimbursement Guidelines, Exchange Act Release No. 45644, 67 Fed. Reg. 15,440, at 15,443-15,444 (Apr. 1, 2002)*

fees with each intermediary is impractical, due to the number of market participants, and the revenue-sharing relationship between the intermediaries and Broadridge. Furthermore, issuers have no contractual relationships with banks and brokers or the agent(s) they employ to discharge their communication obligations. The Securities Transfer Association ("STA") letter of June 2, 2010 examined in detail a number of concerns with the inappropriateness of current fees. We would direct the Commission's attention again to that letter.

We note that it has been almost a decade since the NYSE reviewed its proxy fee schedule. In its June 2, 2010 letter to the Commission, the Securities Transfer Association outlined several practices that bring the interpretation and implementation of the current fee structure into question, including (without limitation): (i) the appropriateness of suppression fees; (ii) Notice & Access fees; (iii) the billing of transaction and suppression fees (and Notice & Access fees) for the consolidation of accounts representing managed accounts voted by money managers; and (iv) the practice of "fee-sharing" between Broadridge and its intermediary clients. The letter also cites the 2006 recommendations of the NYSE Proxy Working Group, in which they call for an independent third-party analysis to determine if the fees are "reasonable" based on Broadridge's costs of providing service and their related revenues, and whether their broker rebates cover costs unrelated to beneficial owners. There is no evidence that these recommendations were ever implemented.

It is noteworthy that the NYSE sought to follow a "market forces" approach to pricing for the implementation of Notice & Access. However, Notice & Access communications still operate through the established system where materials for street-name holders must be distributed via the intermediaries. This enabled Broadridge to establish non-negotiable fees for dissemination of Notice and Access materials. With a monopolistic entity embedded within the system (supported by regulations that continue to place the primary obligation to communication on intermediaries), it is not possible to achieve competitive market pricing. The Broadridge pricing policy for Notice & Access specifies that all standard NYSE fees will continue to apply to Notice & Access, except for some minor modifications on certain fees. *In addition*, Broadridge applies what it refers to as an "incremental fee for all positions in an issuer's… job when N&A is chosen"[13].

These considerations reinforce the need to fundamentally reconfigure the approach to the aggregation and distribution processes. All aspects of the current system are interconnected and mutually reinforce the cost inefficiencies and quality concerns. These issues cannot be cured by simply adjusting the fees to reduce the cost burden on issuers; nor is it practicable to just remove the regulated fees to allow negotiated fees to be implemented. Competition will only be achieved by transferring the distribution obligation to the issuer and requiring the intermediaries to provide the client/shareholder information to enable the issuer to communicate with its shareholders directly. This aligns the obligation to pay for services with the contractual obligation to effect such communications, and will remove the most critical impediments to the development of a market-based solution. The technologies did not exist to facilitate this model when the communications system was first introduced. Today, we firmly contend, that is no longer the case.

The STA has recently released an analysis titled "*Estimated Cost Savings of a Market-Based Proxy Distribution Model*"[14]. The study compares the proposed pricing from six large providers of transfer agent services for three proxy jobs of different sizes with the actual fees charged by Broadridge. The results demonstrated savings ranging from 20.52% and 71.62% when compared to current billing practices.

The most effective solution to this inherent conflict is to separate out the two key functions that are involved in distributing proxy materials to beneficial owners: the process of aggregating data on the ownership positions; and the dissemination of proxy and other shareholder communication materials.

[13] See http://www.broadridge.com/notice-and-access/basic.asp Pricing Tools.
[14] The STA White Paper is available at www.stai.org

A. The Structure of the Data Aggregator "Hub"

The data aggregation process should be performed by an independent, not-for-profit regulated industry service-provider (the "Hub") approved by the Commission and relevant Self-Regulatory Organizations such as the NYSE.

We believe that DTCC is the most logical entity to operate the Hub. DTCC is the central repository for the banks and brokers-dealers that separately hold and maintain the beneficial owner positions, which are the focal point of these recommendations. As a low cost provider of choice, it has built and maintained electronic connectivity to all of the industry members in the proxy process, including the proxy tabulator/distributor providers, such as Broadridge and Mediant. Issuers and their agents have direct communication links with DTCC.

DTCC has unprecedented experience as a hub provider. For example, its subsidiary, National Securities Clearing Corporation (NSCC)[15] operates Networking, a mutual fund process under the Fund/SERV product line. Networking is a central record-keeping system through which all mutual fund investor account information can be exchanged and reconciled between the funds (issuers) and banks, brokers-dealers, and other designated distribution firms, allowing identical investor information to appear on all intermediary records. This model is similar in scope and functionality to the Hub that we are recommending.

Under DTCC's depository services, its subsidiary, DTC, operates the Profile Modification System ("Profile"), another example of DTCC providing Hub-like services for the exchange of beneficial owner contact information and positions. Through Profile, DTC provides an electronic interface to pass instructions to move beneficial and registered investor positions between DTC participants and issuers and transfer agents. Investor information, such as broker or transfer agent account numbers, addresses Social Security Numbers and Tax Identification Numbers, is exchanged on a daily basis.

DTCC has the ability to manage and store large volumes of data in a secure manner, alleviating any security or privacy issues. DTCC supports a comprehensive range of electronic connectivity methods, such as batch, file transfer, and secure online connections. DTCC's subsidiary already has the systems and processes in place to announce and track multiple record dates for an issuer.

The Hub will require Commission regulations to be enacted. The Commission, and Federal and New York Banking authorities, among others, already regulate DTCC and most of its subsidiaries.

The Hub entity would interface directly with the intermediaries to obtain record date shareholder data. Intermediaries would be required to reconcile their own entitlement holder records to the DTCC position. In addition to the shareholder's address (and email address if consent to e-communications is given) and share position, the list should also indicate the investor's delivery preferences (e.g., electronic delivery, delivery to a voting agent, etc.) if applicable.

Once the files have been received from all intermediaries, the Hub would also have a verification process to ensure that the reconciliation was performed and would match the aggregate numbers to the DTCC omnibus proxy, which is the record date position for each intermediary.

[15] DTCC's subsidiary, National Securities Clearing Corporation (NSCC), established in 1976, provides clearing, settlement, risk management, central counterparty services and a guarantee of completion for certain transactions for virtually all broker-to-broker trades involving equities, corporate and municipal debt, American depositary receipts, exchange-traded funds, and unit investment trusts.

The Hub will compile and transmit the reconciled "qualified voters list" to a proxy distribution agent chosen by the issuer. Shareholder delivery preferences (e.g., electronic distribution, "wrap" accounts, "house-holding" accounts, etc.) would be stored by the intermediary or its agent. The issuer's agent would then load the accounts to the meeting file, similar to any other third party data file, such as an employee plan participant file.

The Hub should not store the investor information. The data in the files received from intermediaries is a snapshot at the record date only, which should be immediately purged at the conclusion of the event, and the enabling rules should specify that it cannot be used for any purpose other than shareholder communications.

We estimate that the total number of beneficial owner records that would need to be handled by issuer agents would be 250 million, based on data extrapolated from annual meetings handled on behalf of their clients in 2009. A discussion of the technical aspects of the proposed data aggregator Hub is provided in our "*Proxy Mechanics Discussion Paper*"[16]. We also note that we are preparing a detailed analysis of the Hub processes, including capacity analysis, which will be separately provided to the Commission to further substantiate this proposal.

While we believe DTCC is the logical "first choice" to act as the Hub operator, other major data management and processing organizations in the financial services space may also be able to fulfill this role effectively. In our view, there will be significant "time to market" and cost advantages if DTCC introduces what should be seen as modest incremental system changes to facilitate shareholder communications by issuer agents. There are international precedents for central settlement systems providing connectivity services between market participants and issuer agents to facilitate shareholder voting, e.g. the UK CREST system operated by Euroclear UK & Ireland. In the CREST environment, intermediaries may elect to either transmit votes electronically via CREST or lodge them directly with the issuer's agent.

B. Fees for Proxy Distribution and Communications

Corporate issuers should have the right to choose their own service provider for proxy distribution and tabulation services in an open market where fees are determined by competitive forces. By separating the role of data aggregator of shareholder records from the distribution of proxy and other communications material to street-name shareholders, the distribution and tabulation function can be submitted for competitive bidding; allowing issuers to choose a distributor not only on the basis of price but also on the quality of service and innovative products.

The fees paid for proxy distribution and communication services, including Notice & Access, should be established through open competition among service providers handling these functions, based on value to end-users and not through a fee schedule established by regulators. Under a competitive system, the issuer's agents would have a vested commercial interest in providing innovative products that encourage increased use of technology (including electronic distribution) at fees that better reflect their costs and commercial margins.

Computershare's own internal analysis concluded that our clients could realize an average savings of at least 30% (and more where electronic communications are effected) in a competitive market environment. The STA White Paper on "*Estimated Cost Savings of a Market-Based Proxy Distribution*

[16] *Proxy Mechanics Discussion Paper: Comparison of Existing and Proposed Market Mechanics*, dated May 3, 2010,and available at: http://shareholdercoalition.com/ComputershareDiscussionPaper_MarketMechanicsComparison5-3-2010.pdf

Model" showed savings ranging from 20.52% and 71.62% when compared to current billing practices. This clearly demonstrates the significant cost efficiencies that a market-driven pricing structure would provide to issuers, thus benefitting the shareholders.

Communications and Shareholder Participation

Issuer Communications with Shareholders

We continue to be very concerned that the current market structure inhibits issuers' ability to communicate with their shareholders. The structure of street-name holdings, particularly the NOBO/OBO distinction, imposes excessive costs and administrative burdens on issuers, and reduces their capacity to effectively communicate with investors. This is highly detrimental in an environment where corporate governance and the informed exercise of ownership rights are increasingly important and subject to widespread scrutiny.

The 2006 NYSE "Investor Attitude Survey" demonstrated a strong preference among investors for direct communication with the companies in which they have chosen to invest. An overwhelming 95% of investors indicated that they would elect to be NOBO and receive direct communications from the issuer if a nominal fee of $50 per annum were charged to maintain their account as OBO. This strongly suggests that any privacy concerns are not deeply held by the vast majority of retail investors. It is also notable that very few investors recalled being asked whether they wanted to be NOBO or OBO, and widespread ignorance of the current proxy process was apparent.

As an example of the impact of the high costs of communicating to beneficial owners, we would draw the Commission's attention to the change in issuer practice in relation to quarterly reports. Prior to the mid 1990's, many issuers voluntarily disseminated their quarterly reports to all shareholders, registered and beneficial. However, the excessive cost of distributing to beneficial owners has resulted in issuers ceasing to send out quarterly reports. In our view, reforming the system to deliver substantial cost savings to issuers will result in an increase in the types of informative shareholder communications that issuers will distribute. While the internet has been revolutionary in providing a means to achieve the highly cost-effective publication of information, it still generally requires users to search for the information they need. The direct communications model enables issuers to send (or "push") the information directly to all their shareholders. The internet is a very effectively platform to complement direct communications protocols.

We do note that the recent amendments to Rule 452 have not resulted in appreciable reductions in quorum for the majority of issuers, although small and mid-cap issuers have tended to experience somewhat greater difficulty. In our experience, this is largely due to many issuers following the practice of including at least one 'routine' item on their ballot, to enable the intermediaries to vote[17]. Moreover, the institutional vote has enabled issuers to achieve quorum even in an environment where the retail vote participation has significantly declined.

Identifying Who is Entitled to Vote

The U.S. depository system operated by DTCC, with securities held in fungible bulk, has served the securities industry effectively with regard to the clearing and settlement of trades. However, it is an impediment to highly efficient interaction between a corporate issuer and its shareholders, and to the accurate tabulation and confirmation of votes, by increasing intermediation of share ownership coupled

[17] As suggested in our submission to the Commission on the Rule 452 changes, of March 27, 2009.

with a regulatory structure where the issuer is precluded from direct control over its communication with the vast majority of its shareholders.

The combination of new regulatory requirements (such as Proxy Access and "say on pay") with dwindling retail voter participation make it essential for many, if not most, issuers to engage in active outreach campaigns to solicit votes. Solicitation efforts benefit investors by further educating them on the issuer's strategy and the issues to be voted on, particularly given the unfriendly and sometimes uninformative content of the generic forms presently used to obtain votes from street-name holders. Solicitation costs under the current intermediated structure are often excessively high however, due to the difficulties experienced by issuers and their service providers in simply trying to determine who their investors are and who is entitled to vote. It is important to note that solicitation efforts are not simply a matter of an issuer attempting to obtain a preferred result; solicitation can be essential to achieving quorum.

While we generally refer to street-name holders as "shareholders" or "beneficial owners" in this response, we appreciate that, at law, investors that hold their securities through a broker or bank are defined as having a security entitlement which arises from the act of their intermediary creating a book entry indicating that securities have been credited to the investor's account. In effect, that book entry determines who, under state law, is entitled to the securities, and entitled to the rights of ownership including the right to vote. As noted earlier, this is however complicated by market practices such as securities lending or the use of the fungible bulk position to cover settlement fails, where the intermediary's bulk position at DTCC may be reduced but the positions of its entitlement holders are often not adjusted.

To identify those investors entitled to vote, an issuer will need to obtain a list of Non-Objecting Beneficial Owners (the so-called "NOBO list") from Broadridge, hire a surveillance firm, or both. A typical NOBO list covers only approximately 30% of a company's outstanding shares (primarily retail investors). Fees for the NOBO list are partially regulated, and are often a substantial burden on issuers with large retail populations. We note that the NYSE rules specify a fee of 6.5 cents per name for NOBOs, but allow the intermediary's agent to determine the quantum of additional "reasonable" expenses in providing the information. This structure again supports Broadridge in exercising its monopolistic power to dictate additional non-negotiable fees for the NOBO list[18]. We also note that the NOBO list provided, at some considerable expense, may be inaccurate and include beneficial owners who have sold out of their position some months prior to the date the list was created.

The cost impact of obtaining the NOBO list is exacerbated by Broadridge's unilateral "all or nothing" policy. That is, Broadridge requires an issuer to take the entire NOBO list, charging at the prescribed rate plus Broadridge's non-negotiable additional fees, even if the issuer is seeking only to identify a target group of investors; based on holding size, for example. An issuer will commonly seek to maximize its solicitation efforts for quorum by reaching out to its largest holders. As a significant majority of holders on a NOBO list have very small positions, being forced to obtain the whole NOBO list can at times be prohibitively expensive, in excess of $100,000[19]. In any event, the current regulatory framework does not permit direct communications for proxy materials. NOBO lists cannot be used to facilitate the distribution of such materials. This is one reason why broader reforms to the proxy system are needed.

Streamlining the Process and Improving Quality of Communications

The reforms that we have proposed to the proxy system would substantially improve the process of shareholder communications, delivering cost efficiencies. Combining the registered and beneficial owners in the same process will result in a more efficient and streamlined system. Both groups would be serviced

[18] Similar to the unintended consequence of the NYSE's approach to fees for Notice & Access.

[19] Appendix 3 provides an example of pricing for a NOBO list. It looks at a sample issuer that is representative of issuers with a large retail investor base, and uses Broadridge's published pricing schedule.

by one proxy agent using one card and one set of rules. A customized proxy card with the company's logo, larger type and a plain-English description of the agenda items being voted on is more likely to attract the attention of the shareholder and could be used by any shareholder for admittance to an annual meeting.

It is widely acknowledged that retail voter participation has significantly declined. In our experience, working with both registered and street-name holders, this is at least partially attributable to factors relating to the quality of the communication provided to shareholders. Street-name holders receive VIFs that are designed by the intermediary's agent not the issuer. With its dominant market position, Broadridge therefore designs the vast majority of the VIFs. The VIFs are nearly identical for all issuers that a street-name holder may invest in, non-descript and not user friendly. No differentiation is apparent, to allow an investor to distinguish among the forms received for their various investments. For example, the proxy materials are enclosed in generic plastic wrap that makes it very difficult to identify the issuer.

The proposal descriptions are often highly uninformative and do not clearly explain the items to be voted on. For example, they may just cite "Shareholder Proposal #3" without any explanation of the subject matter for investors to consider and vote on. The VIF does not mirror the wording used by the issuer on its proxy card, which details the items to be voted on, thereby impeding investor comprehension of the matters subject to vote. In addition, the items may be presented in a different order from that on the proxy card, creating further difficulties in accurately tabulating voting results and increasing the risk of errors. Appendix 1 includes examples of situations where the VIF has not accurately reflected the actual proposals to be voted on.

This generic approach to street-name communications does not benefit investors. The poor quality of communication in the VIF, directed by entities that do not have any incentive to educate investors about the issues presented by a particular issuer[20] or to encourage voting, in our view contributes to declining retail vote participation. Such investors are disadvantaged by not receiving material directly from the issuer. Many issuers expend considerable efforts in the design of their proxy cards, to facilitate comprehension by their shareholders. By sending the same proxy card to all investors, rather than having beneficial owners receive a generic and uninformative VIF, issuers can ensure that critical information on the exercise of the investor's voting right is adequately conveyed.

We believe that this poses a real concern for corporate governance. Shareholders must be clearly advised of each proposal to be voted on, to enable them to measure and evaluate the proposals and make an informed voting decision.

Today, street-name holders wishing to attend annual meetings in person must go through additional steps to obtain a legal proxy from their intermediary proving ownership before gaining admittance to the meeting. If the proxy right is transferred directly to the street-name holder, this step will also become redundant.

Balancing Transparency and Confidentiality

The removal of the categorization of investors as NOBO or OBO will deliver transparency that will require intermediaries to reconcile their positions and clarify the allocation of voting rights. The process will be capable of "end-to-end" independent audit.

[20] Or by another shareholder, under the anticipated Proxy Access rules

We note that the issue of investor anonymity or privacy is frequently raised as a reason for retaining the NOBO/OBO classifications. We would suggest that the Commission give consideration to the fact that banks and brokers already outsource the mailing of all shareholder communications to a third party, Broadridge, and thus are already turning over to a third party confidential information: their clients' names, addresses and the number of shares held by their clients in each company. We also note that the NYSE 2006 Shareholder Survey results indicate that anonymity from the issuer is not a significant concern for the vast majority of investors. We assert that regulations and other holding facilities (e.g. nominee or trust arrangements) can fully protect the interests of investors.

We believe that the NOBO/OBO distinction must be eliminated to better balance the privacy rights of investors with the interests of the issuer and other key stakeholders in a more transparent, accurate and cost-effective system. We would direct the Commission to the effective experience that flows from greater transparency in international markets. For example, the United Kingdom[21] and Australia[22] both provide a regulatory right for issuers to require intermediaries to disclose the beneficial owners that they represent. This right recognizes the mutuality of the relationship between an issuer and their investors, and the need for direct engagement and communication in the interests of better corporate governance. Such transparency is an accepted feature of those markets and exists without detriment to investors or intermediaries.

Many, though not all, institutional OBOs already have their names, addresses and shareholdings made public, when they file this information on their quarterly Form 13F filings with the SEC. Eliminating the NOBO/OBO distinction for these shareholders would only minimally decrease the time lag before which the details of their shareholdings become known to the companies whose shares they hold.

For investors that remain concerned about shielding their identity from the issuer, the investor can make arrangements with their intermediary to have their security entitlement recorded in a nominee name, and have the nominee's details included in the eligible voters list instead of the investor's details. The use of a nominee was common in the industry prior to the creation of the NOBO/OBO distinction and continues to offer a sensible and equitable solution. Issuers should only be obliged to distribute communications to the entity named on the eligible voters list. The intermediary may request the issuer to provide additional sets of materials to it, for the intermediary to distribute to the beneficial owners underlying a nominee. However, the issuer should not be required to pay for the costs of distribution to multiple beneficial owners that sit beneath the nominee.

It is imperative that *all* entitlement holders' positions be included in the list (including nominee names that have been substituted for investors that elect for privacy), to enable full reconciliation of the voting process. However, use of a nominee name will enable investors to continue to shield their identity, so far as they are otherwise permitted to do so by law.

Elimination of the NOBO/OBO distinction would also help to address the ongoing issues of stock lending, over-voting and empty voting. These issues can result in the potential disenfranchisement of shareholders in the voting process and, in the worst case scenario, compromised voting outcomes. As discussed earlier in this response, intermediaries would be required to produce a list of all of their record date beneficial owners and then tie the total number of votes held by each firm to the shares that each firm holds at DTCC on such record date. This would lead to further transparency and confidence in the entire voting process which is increasingly becoming more critical with the prospect of a substantial increase in the number of "close call" votes on director elections that are likely to occur as a result of Proxy Access, amended Rule 452 and the prevalence of issuers that have now adopted majority voting in the election of directors.

[21] UK Companies Act 2006 s.793

[22] Australian Corporations Act 2001 ss. 672A & 672B

We support calls to make shareholder meetings more inclusive and effective[23]. Specifically, we support enabling issuers to use virtual meetings to be more inclusive, facilitating a greater number of shareholders to view and participate in the business of the meeting (and potentially to move towards facilitating voting through this mechanism). These important innovations must be established in an open and competitive environment, allowing issuers to freely choose their service providers based on quality of service and competitive pricing. Efficient and cost effective access to beneficial owner information is critical to this policy objective.

Means to Facilitate Retail Investor Participation

Investor Education

We strongly believe that a system in which issuers have direct access to all of their shareholders will increase the level of engagement and improve participation rates. The use of issuer-controlled proxy forms for all investors that are eligible to vote will improve comprehension and increase vote returns. The restructuring of the proxy system that we have proposed will necessitate a coordinated education campaign at all levels of the proxy process; including issuers and their agents, the intermediaries, and the Commission at a national level. Other possible means of affecting the level of retail voting would be to convene retail investor focus groups.

Client Directed Voting

The issuance of standing instructions for proxy voting is a matter between the beneficial owner and their intermediary, and has always been available as a contractual service between investors and their agent/intermediaries. As such, it seems appropriate for developments in this area to be viewed as a value-added service provided by the broker and not something that should be developed at the expense of the issuer. If client directed voting is approved by the Commission and implemented by the brokerage community, there is no reason why it cannot sit comfortably within the direct communications model. These proposals are not mutually exclusive.

Importantly, we do not view the initiative to introduce widespread standing instructions between brokers and their clients as a "cure-all" for the deficiencies in the current proxy system outlined in this comment letter.

The direct communications model will also support proposals by interested third parties to enable retail voting platforms to develop (e.g. MoxyVote).

Changes to Notice & Access

We recommend that the Commission undertake further changes to the rules relating to Notice & Access, to enhance this mechanism. We would again refer the Commission to our comment letter of November 20, 2009[24], in response to proposed Notice & Access rule changes, where we provided statistical analysis of our clients' experience with Notice & Access, and detailed our recommended changes to eliminate unnecessary issuer expenses, increase retail shareholder voting, create more efficient high quality end-to-end proxy processing, ensure a competitive market and increase the transparency of share ownership. We strongly believe Notice & Access helps achieve issuers' corporate sustainability objectives by providing

[23] For example, we refer to the "*Survey of Investor Communication Priorities for Voting Decisions, October 6, 2010*" - undertaken by The Shareholder Forum.

[24] Computershare letter to the Commission, dated November 20, 2009, regarding "*File Number S7-22-09, Amendments to Rules Requiring Internet Availability of Proxy Material*".

an environmentally friendly and cost effective alternative without a significant negative impact on the voting results.

Our view is that the Notice & Access model has provided issuers with a major opportunity to reduce the high expense of the proxy solicitation process and to further enhance the use of the Internet, resulting in a more effective and efficient method for proxy material distribution. With the proper changes (coupled with the deployment of a direct communications system), we believe that the Notice & Access model will also enhance shareholder voting and communication. As the analysis provided in our letter of November 20, 2009, showed, the then-current process was resulting in a decrease in shareholder voting. We believe proper shareholder educational efforts and more flexibility in the Notice, together with some operational changes identified in that letter, will result in the Notice & Access process becoming an effective tool for both investors and issuers.

We believe the following would assist in improving shareholder voting percentages:

- Shareholder education on the Notice & Access model and the importance of their vote
- Including alternative voting methods on the Notice:
  - Promoting the telephone voting number on the stand-alone notices would potentially increase voting participation without the cost of a second mailing with a proxy card. The telephone voting system would allow shareholders to confirm access to the materials prior to voting;
  - Allowing the enclosure of a proxy card, business reply envelope **and** a summary of proxy statement would also encourage shareholders to vote. Shareholders would understand which matters are being voted on and where they can get additional details regarding the meeting such as proxy statement, but would not be required to review additional materials prior to casting their vote;
- Reducing the 40-day rule to 30 days would allow issuers with very tight timelines to adopt Notice & Access.

Notice & Access was implemented within the current structure whereby the notices to street-name holders must be disseminated through the holders' intermediaries (although the NYSE did not specify the fees for such dissemination). Further to the matters presented earlier in this response, we strongly believe that issuers should be able to direct communications to **all** shareholders, both registered and beneficial. We believe this will improve the voting response and allow issuers to have a choice of providers driving market price for the services elected. The current situation with Notice & Access is an unsuccessful hybrid, where the NYSE sought to allow market forces to determine pricing but left intact the current monopolistic environment, where issuers are "price-takers" for communications to street-name holders.

Data-Tagging Proxy-Related Materials

We understand that institutional investors and intermediaries would like a data-tagging system to be introduced for the disclosure of proxy-related information, in part to facilitate advanced notice of impending record dates. We are not yet convinced that any cost to issuers of implementing such a system is justified, as the benefits of data-tagging have yet to be proven. Further consideration needs to be given to this matter through dialogue between operational experts for the key stakeholders.

Relationship Between Voting Power and Economic Interest

Proxy Advisory Firms

We recognize that proxy advisory firms (such as Institutional Shareholder Services, Glass, Lewis & Co., and Proxy Governance, Inc.) serve a necessary and beneficial purpose for institutional investors who are faced with the challenge of analyzing proxy statements for hundreds, if not thousands of shareholder meetings on an annual basis. For that reason, these investors have needed to increasingly rely on these resources when making their voting decisions. Given the significant percentage of institutional ownership in most publicly traded companies in this country, the recommendations of proxy advisory firms have become a much greater factor in determining the vote outcome at those meetings.

We believe that the growing influence of the proxy advisory firms furthers our case for providing issuers with direct access to their shareholders and for the implementation of the other steps outlined in this letter. However, we do not propose to comment on the policy question of whether such advisors should be regulated, as this goes beyond our focus on proxy mechanics in this comment letter.

Dual Record Dates

The use of dual records dates could be a useful tool in aligning shareholders voting rights with their economic interest. Such a system would eliminate the possibility of empty voting, especially in those cases where an investor has either liquidated or reduced their position after the notice record date but prior to the meeting. Any increased costs related to a second distribution should be mitigated by the widespread use of electronic voting by Institutional investors, the group most likely to have actively traded the stock over a short period of time. This practice is the standard in some foreign markets (e.g. United Kingdom and Australia), where a high degree of system-wide transparency is a core and underlying feature of the market infrastructure and governing regulatory framework.

Brokers handling purchases and sales in the period between the record date for mailing purposes and the final qualification date for voting purposes (e.g. shortly before the meeting) should be required to make available proxy materials to new beneficial owners after settlement and the crediting of shares to the client's account. This could be achieved via electronic means or by a request to the company to produce materials for the investor "on demand". Use of dual record dates would necessitate a second data transmission of eligible voter positions via the Hub, to enable final voting positions to be made available to the issuer's tabulation agent. Any votes previously submitted in respect of holdings sold between record dates would become ineligible immediately. Votes in respect of new positions (or increased positions for an existing shareholder) may need to be communicated using a special transaction number to enable the issuer's agent to identify the corresponding holding, since the issuer's agent will not have previously issued a voting control number to the purchaser.

Conclusion

In summary, we applaud the Commission for its efforts in bringing these critical issues to the forefront and facilitating a public policy debate. We strongly submit that the public policy for shareholder communications and proxy would be best served if the system for ownership, shareholder communications and voting were made more transparent and competitive. These objectives can be achieved by implementing the recommendations of the Shareholder Communications Coalition.

Specifically, we recommend that:

- The NOBO and OBO distinction should be abolished. A street-name investor should have the option for their intermediary to record their securities entitlement either directly in their own name (where their holding will be visible to the company, permitting direct communications between the parties); or through a nominee or custodian arrangement (in which case the company will deal with the investor's chosen nominee or custodian).
    - The SEC should also consider whether separate regulations should be introduced to enable companies to identify beneficial owners through tracing mechanisms. Arguably, this process could significantly reduce the cost of requiring certain institutions to file 13F filings more frequently. This is a distinct though somewhat related issue to shareholder communications;
- Intermediaries should be required to provide names and addresses (and other pertinent client information) for the purposes of facilitating efficient communications to their client, recognizing the client's separate and parallel context as an owner of the company;
    - The legal and regulatory framework should be amended to afford investors this right and to require intermediaries to provide this information.
    - The only exception to this would be in relation to clients whose preference is to hold securities in a nominee or custodian holding (in such cases the issuer's obligation would be to deal only with the nominee or custodian for its entire holding, leaving the nominee or custodian and the investor to make their own arrangements about such matters);
- Companies should have the right to select their trusted and qualified service provider to conduct their shareholder communications and proxy distributions and tabulation requirements.

We are strongly of the view that introducing transparency and competitive forces to such a critical part of our corporate environment is a win-win for issuers and investors alike. The Commission has long stated its objective to introduce a competitive market model for proxy services. The infrastructure to support an open and competitive model exists and, in our view, can be introduced within 12 months of a policy decision being taken to reform the current system.

Any steps to reduce NYSE-regulated fees without a change to the underlying infrastructure and intermediary system will simply be another stop-gap measure. As occurred with previous fee modifications (e.g. in the early 2000's), the stakeholders will be forced back to the negotiating table at some point in the near future to again press for system-wide reform if the regulated rates and market rates again get out of kilter. As technology continues to offer new communication opportunities and the cost of communication falls, the question of "reasonableness" of fees will inevitably arise again.

A committee is no substitute for a competitive and open market that facilitates the needs of principal stakeholders in the system. Given the time it takes all stakeholders in the market (regulators and market users) to conduct such market wide reviews (i.e. approximately 2 years), this approach seems highly inefficient, dysfunctional and very costly. Conversely, any move to increase the transparency of the market infrastructure (and its governing regulatory framework), without affording issuers the right to use that ownership information to directly communicate with their owners through a competitive market-based solution for proxy and other shareholder communications purposes, is only going to be of partial value.

With the exception of enabling rules, the core ingredients for a robust, competitive and innovative shareholder communications and proxy voting system that meets the critical needs of the principal stakeholders in corporate governance matters (i.e. issuers and their owners), are either in place or are, in our view, capable of being put in place. The "system" simply needs to be reconfigured to allow these policy outcomes to occur. The time for change is now. The lessons of the past decade (even when viewed narrowly in the context of proxy reform) have shown that the market cannot waste or defer this opportunity to modernize proxy mechanics, to better serve the needs of its principal users in the future. We firmly believe this modernization program can be achieved without negatively impacting the efficiency of the secondary markets, which we all have an interest in preserving. In fact the opposite should be true. Good governance outcomes should enhance the positioning and competitiveness of the US market.

We truly appreciate the opportunity to comment on Proxy Reform and trust these comments are of value to the Commission in its policy considerations. If you would like additional input or clarification on these points, please feel free to contact the undersigned at (212) 805-7154 or Charles Rossi at (781) 575-4067.

Yours sincerely,

Paul A. Conn
President, Global Capital Markets
Computershare Limited

Steven R. Rothbloom
President & CEO Computershare US
Computershare Inc.
Georgeson Inc.
Computershare Communications Services Inc.
Computershare Technology Services, Inc.
Kurtzman Carson Consultants LLC (KCC)

cc: The Honorable Mary L. Schapiro
The Honorable Kathleen L. Casey
The Honorable Elisse B. Walter
The Honorable Troy A. Paredes
Kayla Gillan, Deputy Chief of Staff
Meredith Cross, Director, Division of Corporation Finance
Robert Cook, Director, Division of Trading and Markets
Andrew Donohue, Director, Division of Investment Management
Henry Hu, Director, Division of Risk, Strategy, and Financial Innovation

Appendix 1- Proxy Integrity Issues

Category 1: Accuracy in Tabulation / Recordkeeping

Bungled vote requires court hearing to remedy
An asset management firm faced a shareholder proposal that was close to passing. Management expected a large vote against the proposal from a proxy advisory firm's client. The proxy solicitation firm informed the company that it appeared the expected "against" vote had not been cast, based on the numbers reported for the investor's custodian via the street-side proxy service provider. The meeting took place, and the company announced that the preliminary results showed that the proposal had passed. Subsequently, the proxy advisory firm discovered that there had been a system error that had prevented the expected "against" vote from being cast, and that timely and accurate processing of the vote would have caused to proposal to fail. The company petitioned the Delaware Chancery Court to re-open the polls to accept the missing votes and was ultimately successful in defeating the proposal.
Sources: Publicly reported in:

- *Pensions and Investments article: http://www.pionline.com/article/20090810/PRINTSUB/308109996*
- *Richards, Layton & Finger (law firm) newsletter: http://www.rlf.com/portalresource/lookup/poid/Z1tOl9NPluKPtDNIqLMRVPMQiLsSw4ZCmW3!/document.name=/corpNewsletter073009pf.pdf*

Glitch mars director election results
An investment firm questioned the reported results of the 2008 director vote at a major technology company, suspecting that the numbers were too low. An inquiry with the street-side proxy service provider revealed that, due to a truncation error, the director "withhold" votes were significantly under-reported.
Sources: Publicly reported in:

- *Bloomberg article: http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aHKBTuxOPjec&refer=home*
- *Yahoo Finance article: http://finance.yahoo.com/tech-ticker/article/44823/Broadridge-to-Yahoo:-Oops,-We-Added-Wrong*
- *BusinessInsider article: http://www.businessinsider.com/2008/8/latest-boneheaded-yahoo-move-miscounted-proxy-votes*

Institutional investor claims irregularities in proxy fight
An institutional investor filed an investigation request with the SEC (http://www.sec.gov/comments/s7-14-10/s71410-6.pdf) claiming irregularities in a proxy fight they conducted against a French company. In the request, the firm claimed that a) numerous electronic votes had not been taken into consideration due to "technical problems involving US custodians and that b) their solicitor was told by the street-side proxy service provider that they could not distribute the investor's fight letters due to an exclusive arrangement between the street-side provider and the company.
Source: Publicly reported on onwallstreet.com http://www.onwallstreet.com/news/sec-broadridge-wysere-pratte-2668434-1.html?zkPrintable=1&nopagination=1

Category 2: Consistent Shareholder Communication

Faulty instructions for two proxy ballots

An activist investor launched a solicitation at an annual meeting for a major retail chain, putting a shareholder proposal up for a vote. Because it was submitted later than usual, the activist's proposal was not included in the mailed proxy statements. The street-side proxy service provider issued separate electronic ballots containing only the shareholder proposal with instructions stating "Should you vote both meetings, only your latest dated instruction will be counted." These instructions could have been construed to mean that if a holder voted both the management ballot and the electronic ballot, only the latest-dated ballot would be counted. Since the activist's proxy contained only the one proposal and no management proposals, shareholders should have been able to cast a vote on both ballots. In addition, the street-side proxy service provider's disclosure documentation erroneously advised that the company's management was in favor of the shareholder proposal.

Source: Publicly reported in Council of Institutional Investors newsletter: *http://www.cii.org/UserFiles/file/resource%20center/council%20governance%20alert/2007%20Archive/2007%20Alert%2020.pdf*

Elimination of broker discretionary voting leads to tighter results

According to data compiled for Georgeson's 2010 Annual Corporate Governance Review, there were nine instances in which director nominees received between 45% and 49.99% of the votes cast in favor. In each of these cases, there were also significant broker non-votes in the range of 11% to 20%. Systemic changes to the proxy system that enable full disclosure of shareholder positions would enable issuers to solicit votes directly from a wider range of investors, without relying on the broker vote.

Source: Georgeson 2010 Annual Corporate Governance Review

Voting instruction form excluded key information on matter of corporate social responsibility

According to Investors Against Genocide, proxies issued directly by a mutual fund met the SEC standard by clearly stating in the voting instructions the subject of the proposal: not investing in companies that substantially contribute to genocide. However, according to the fund, 50% to 60% of its shareholders held their shares in street name and received proxy materials through the street-side proxy service provider. Online and hard-copy voting instructions issued by the street-side service provider referred to the proposal only as "a shareholder proposal described in the proxy statement." The remaining seven questions on the ballot were clearly described in the service provider's voting instructions. Because genocide was not clearly flagged to voters as an issue, shareholders may not have realized that they had an opportunity to vote on it.

Source: Publicly reported on corpgov.net http://corpgov.net/wordpress/?p=365

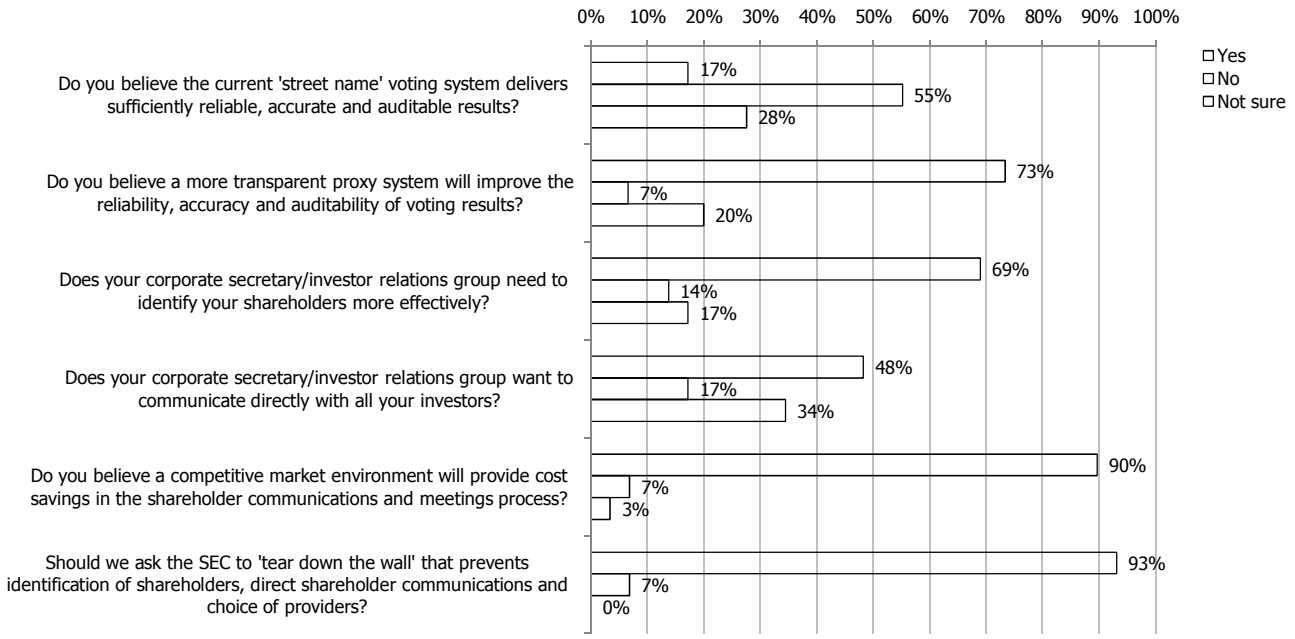
VIF did not reflect actual proposal

An activist investor filed a shareholder proposal calling for a company to eliminate supermajority voting requirements in the company's by-laws. According to the activist, the description contained on the VIF did not adequately explain the nature of the proposal. The proponent sent a letter to the company and the SEC to complain and the street-side proxy service provider subsequently issued a revised VIF.

Source: Publicly reported on corpgov.net http://corpgov.net/wordpress/?p=1372

Appendix 2 – Client Poll

Computershare Client Poll: Proxy Reform



- Data from poll of major Computershare clients, taken October 6, 2010.
- 31 companies represented, including 25 Fortune 500 companies.

Appendix 3 - Example NOBO List Pricing

Based on assumed shareholder numbers and using the published Broadridge pricing schedule for NOBO lists, located at:
https://materials.proxyvote.com/Approved/EPLST1/20100208/OTHER_51850/HTML2/broadridge-cis2010_0055.htm

NOBO COST ESTIMATE

Company Name: XYZ Corporation
Record Date: January 1, 2010
Cusip Number: 999999 10 9

Total Positions Processed (Broadridge)	**1,500,000**

Estimated NOBO Count	1,095,000

NOBO Fees	Quantity	Rate	Cost per Unit
Bank/Broker Reimbursement (.065)	1,095,000	$ 0.065	$ 71,175.00
Broadridge Fees 1-10,000 accounts (.10)	10,000	$ 0.10	$ 1,000.00
Broadridge Fees 10,000-100,000 accounts (.05)	90,000	$ 0.05	$ 4,500.00
Broadridge Fees 100,000 accounts and up (.04)	995,000	$ 0.04	$ 39,800.00
CD ROM and Overnight Delivery	1	$ 40.00	$ 40.00
Estimated Cost			**$ 116,515.00**