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October 20, 2010

Via E-mail: rule-comments@sec.gov

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

Re: Concept Release on the U.S. Proxy System (Release No. 34-62495); File No. S7-14-10

Dear Ms. Murphy:

We are pleased to respond to Release No. 34-62495 (the "Concept Release"), in which the Securities and Exchange Commission (the "Commission") solicited comments on its Concept Release on the U.S. proxy system.

We support the Commission's effort to promote greater efficiency and transparency in the proxy system and enhance the accuracy and integrity of the shareholder vote. We have set forth our comments on some of the issues raised in the Concept Release below in the order of their presentation in the Concept Release.

Accuracy, Transparency, Efficiency of the Voting Process

A. Reconciliation of Over-Voting and Under-Voting

The Commission has noted that broker-dealers use a number of methods to reconcile "over-voting" and "under-voting" and requested comment on whether it should mandate a particular method that all broker-dealers must use to reconcile or otherwise address vote imbalances. We do not believe the Commission should mandate a particular method. As discussed in the Concept Release, "pre-" and "post-" reconciliation methods currently used by broker-dealers to address vote imbalances each have strengths and drawbacks, and the manner and extent to which a particular broker-dealer utilizes these methods, or some combination of them, are determined by the

broker-dealer based on its particular circumstances and customer base. Without empirical data to suggest otherwise, we do not believe that a rigid "one-size-fits-all" approach would be superior to the market practice that has developed over time, or be worth the cost such a transition may require.

In this regard, we note that among the principles recently set forth by the NYSE Proxy Working Group is that market-based solutions are generally preferable to regulatory mandates, in that they result in practices that are customized to individual companies, providing more flexibility, as well as more practical and sustainable solutions.[1] We believe that vote reconciliation is an area where this principle is particularly applicable, due to the variety of potential methods, the absence of a clear preferable method and the potential complexity of the implementation of a single mandated method.

B. Vote Confirmation

The Commission has requested comment on whether it should adopt rules designed to facilitate the ability of investors to confirm whether their shares have been voted in accordance with their instructions. We believe that the cost and other potential negative consequences of implementing any such system would outweigh any benefits investors would gain. Coordination of all participants in the proxy voting chain could be costly and would certainly be logistically difficult, given the large number of parties involved in the proxy voting system. As a practical matter, if issuers or other voting system participants were required to put in place procedures to track single votes in a comprehensive manner, we believe this would likely lead to single entities serving in multiple capacities – *e.g.*, as transfer agent, vote tabulator, proxy service provider, securities intermediary, etc. This could have the effect of reducing competition among providers of these various services and concentrating power and responsibility on a relatively few entities.

C. Proxy Voting by Institutional Securities Lenders

The Commission has requested comment on whether to require issuers to disclose publicly their shareholder meeting agendas (or proposed agendas) sufficiently in advance of the record date to permit securities lenders to determine whether any of the matters warrant a termination of the loan so that they may vote their proxies. We believe such a rule could cause logistical difficulties and confusion for issuers and shareholders that would not be offset by the benefit to those shareholders who lend their shares. Shareholders that lend their shares have knowingly made the decision to give up certain

[1] *See* Report of the New York Stock Exchange Commission on Corporate Governance, Principle 5 (Sept. 23, 2010), *available at* http://www.nyse.com/pdfs/CCGReport.pdf.

voting rights for the lending period in return for the economic benefits received from lending the shares. We note that shareholder meeting agendas generally become publicly available when issuers file their proxy materials with the Commission under cover of Schedule 14A.

Mandating that issuers publish shareholder meeting agendas far in advance of shareholder meetings could present significant practical problems for issuers with respect to pre-meeting logistics. The pre-meeting calendar for public companies is driven by a complex interaction of board approvals, shareholder discussions, advance notice bylaw provisions, state law requirements, stock exchange requirements and Commission rules (including Rules 14a-3, 14a-8, 14a-11 and 14a-13). Layering on top of these a new federal requirement to publish a preliminary meeting agenda would needlessly add to the complexity of the process and would be burdensome to issuers, particularly given that the agenda will necessarily not be final and may later change.

The Commission also requested comment on whether management investment companies registered under the Investment Company Act of 1940 should be required to include in their annual reports of proxy voting on Form N-PX, in addition to information about how they voted proxies relating to their portfolio securities, disclosure of the number of shares voted and the number of shares not voted due to securities lending practices or other reasons. We believe that such a requirement would impose a costly burden on such companies, and question whether it would provide useful information to investors.

Communications and Shareholder Participation

A. Issuer Communications with Shareholders

The Commission requests comment on whether changes should be made to the NOBO/OBO distinction in order to facilitate issuer communication directly with shareholders. We agree that the complexity of the multilayered beneficial ownership and proxy voting system, and the large number of participants and intermediaries involved, make it difficult for issuers to communicate directly with the beneficial owners that have a financial stake in the company. Under the circumstances, we are no longer sure that it makes sense to maintain the NOBO/OBO distinction, and we support efforts by the Commission to eliminate or adjust the distinction in order to facilitate communication efforts by issuers. Of course, any changes made in this regard should respect the right of shareholders who wish to remain anonymous, though we agree with the observation in the Concept Release that such shareholders could easily preserve anonymity by holding shares through a nominee account.

More broadly, we encourage the Commission to provide issuers and proxy solicitors flexibility to vary the layout of proxy materials and include explanatory

materials in order to improve voter communication and increase the likelihood of retail voting. We believe that issuers are in the best position, and have the greatest incentive, to determine how to communicate with their retail shareholders most clearly. Allowing issuers to work with their proxy solicitors on the layout and explanatory content of proxy materials would enable issuers to communicate with their shareholders more effectively and in a less boilerplate manner.

B. Means to Facilitate Retail Investor Participation

With respect to client-directed voting, the Commission asked "[t]o what extent would voting instructions made without the benefit of proxy materials result in less informed voting decisions?" As a theoretical matter, one could imagine an appropriately designed client-directed voting system leading to shareholder votes that better represent the views of all shareholders, given that some of the votes would be based on the previously conveyed general instructions of beneficial owners. However, our concern with client-directed voting is that, as a practical matter, unless the choices for directions are limited to a small number of rigidly defined alternatives, the client directions would necessarily be subject to some ambiguity and subjectivity. And if the choices are, in fact, limited to a small number of defined alternatives, then there is the risk of a large number of retail shares being voted identically (for example, in accordance with the recommendations of a particular proxy advisory firm), in a manner that does not represent the true diversity of viewpoint of the company's shareholder base on the particular matter being voted on. On balance, we believe that it is preferable for shareholder votes on non-routine matters[2] to be limited to those shareholders who made a voting decision on the specific matter with the benefit of the relevant proxy materials.

C. Possible Revisions to Notice and Access Model

In the Concept Release, the Commission asked "[s]hould we consider requiring that companies using a 'notice and access' model for distributing proxy materials use that model on a stratified basis to encourage retail voting participation? For example, should we require that issuers send full sets of proxy materials to shareholders who have voted on paper in the past two years?" We do not support mandating the use of the notice and access model on a stratified basis with respect to proxy material distribution. The example cited by the Commission could have a 'lock-in' effect, perpetuating full set delivery of proxy materials year after year. Such a system would

[2] We note that securities intermediaries will typically have the right to vote uninstructed shares in their discretion on routine matters – thus, the discussion on client-directed voting should be focused on the impact to non-routine matters, where the intermediaries may not vote without instructions from the beneficial owners.

work against the Commission's stated goal of encouraging electronic distribution of proxy materials. Issuers generally have an incentive to encourage retail voting and should be given the flexibility to select a distribution method that works best for their shareholder bases.

We believe that companies utilizing the notice and access model should be permitted to include proxy cards or voting instruction forms ("VIFs") with the notice of internet availability, so long as the proxy card or VIF, as well as the notice, specifies that shareholders should review the online proxy materials in advance of voting. Supplying a proxy card or VIF along with the notice of internet availability would facilitate shareholder voting by make the voting process simpler for shareholders who are accessing the proxy materials online.

D. Data-Tagging Proxy-Related Materials

We do not support data-tagging of executive compensation and other proxy-related information. Information included in proxy materials is very different in nature from financial statement data currently required to be data-tagged in Commission reports. The footnotes and accompanying narrative surrounding proxy information are integral to an understanding of the information. Data-tagging of proxy materials would encourage an oversimplified view of compensation and related matters, and lead to comparisons of non-comparable, substantively different information across proxy statements of different issuers. Investors reviewing compensation and other proxy information in a data-tagged format would be viewing the data in a vacuum, without the context and narrative provided in the proxy statement. Instead of relying on data-tagging, investors should be encouraged to review the comprehensive quantitative and qualitative information set out in the proxy statement, as disclosed under the Commission's detailed disclosure rules.

At a minimum, we recommend a review of the extent to which financial statement data-tagging has been useful to, and used by, investors before expanding the use of data-tagging to executive compensation or other information.

Relationship Between Voting Power and Economic Interest

A. Proxy Advisory Firms

While we agree that proxy advisory firms serve an important role in the current proxy voting system by providing analysis of important governance and other issues and, in some cases, executing votes, we are concerned about the growing level of influence of proxy advisory firms, and the lack of requirements for these firms to provide information on their procedures and policies. We note in particular that proxy advisory firms vary greatly in the extent to which they publicly disclose their policies for

formulating recommendations as to the matters voted on, ensuring the accuracy of information used to formulate recommendations, including giving issuers adequate time and opportunity to confirm data, and avoiding conflicts of interest. We believe the current system should be improved to promote transparency in this area. This could be accomplished through direct regulation of these firms to require such disclosure, or through the imposition of disclosure requirements on institutional investors that utilize a proxy advisory firm in making voting decisions or casting votes (for example, requiring the investor to disclose the firm on which it relies, and whether the firm makes the disclosures referenced above with respect to the particular matter voted on).

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We appreciate this opportunity to comment on the Concept Release, and would be happy to discuss any questions with respect to this letter. Any such questions may be directed to Janet T. Geldzahler (202-956-7515) in our Washington, D.C. office or Glen T. Schleyer (212-558-7284) in our New York office.

Very truly yours,

SULLIVAN & CROMWELL LLP