Association of Corporate Counsel

1025 Connecticut Avenue, NW, Suite 200
Washington, DC 20036-5425
tel 202.293.4103
fax 202.293.4701
www.acc.com

October 20, 2010

United States Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Attention: Ms. Elizabeth M. Murphy, Secretary

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

Ladies and Gentlemen:

The Corporate and Securities Law Committee ("Committee") of the Association of Corporate Counsel ("ACC") appreciates this opportunity to comment on the Securities and Exchange Commission's ("SEC") "Concept Release on the U.S. Proxy System" ("Concept Release").

Overview

ACC is the world's largest bar association, serving the professional needs of individuals who practice in the legal departments of corporations, associations and other private sector organizations around the world. It has more than 25,000 members in over 80 countries, and these members are employed by more than 10,000 organizations. As one of ACC's largest committees, the Committee consists of more than 7,200 members at over 4,600 organizations in the United States. The views expressed in this letter represent the views of several constituent members of the Committee, but not the views of the ACC as a whole.[1]

In the Concept Release, the SEC asked whether it should take action in any of three principal areas:

- The accuracy, transparency and efficiency of the voting process;
- Communications with shareholders and shareholder participation; and
- The relationship between voting power and economic power.

The Committee strongly believes that the SEC should foster the development of a more accurate, transparent and efficient voting process, and supports the involvement of self-regulatory organizations ("SROs") and industry participants in developing solutions. These constituents are a critical component of the clearance, settlement and transfer process and their expertise and input is crucial to any reform of the proxy and voting systems.

The Committee similarly applauds the SEC's efforts to increase and facilitate communications between issuers and shareholders. A better informed retail shareholder community would result in higher voter participation with benefits to issuers and shareholders.

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[1] The Committee acknowledges Lindquist & Vennum, P.L.L.P.'s assistance in preparing this letter. Lindquist & Vennum also joins the Committee in expressing the views expressed herein.

Finally, the Committee recognizes that the increased complexity of today's securities markets creates voting rights and economic rights that may be divided in various ways as a result of activities such as securities lending, short sales and sales after record dates. The Committee believes that parties with economic interests should be the parties entitled to vote the securities.

The Committee commends the SEC for its efforts in the aforementioned areas and specifically responds to the Concept Release in a number of areas where comment has been requested.

1. Over-Voting and Under-Voting

Our member companies are generally uncertain of the extent to which over-voting or under-voting occurs at their companies due to the limited visibility of the process used by securities intermediaries to reconcile the number of shares entitled to vote and report the totals to tabulators and issuers. We strongly support the implementation of a more transparent system in the reconciliation process. This would provide issuers, tabulators and shareholders more direct knowledge as to how votes are collected.

Securities intermediaries should be required to "pre-reconcile" the votes prior to distribution. Mere disclosure of an intermediary's reconciliation process is not helpful by itself. Further, pre-reconciliation would decrease the likelihood that voting is skewed for or against a particular action by an intermediary. Allowing an intermediary to vote more shares than it is entitled to vote may cause an outcome that is not representative of the interests of the beneficial owners, or might disproportionately benefit the intermediary or its clients.

The SEC should require brokers and other financial intermediaries to produce an eligible voters list as of the record date for each shareholders' meeting. This list would constitute a voting registrar that could be combined with other brokers' positions and the registered shareholder list for use by the inspector and the tabulator to verify and authenticate voting. A pre-reconciliation methodology should become standardized and a prerequisite to an intermediary's transmission of record date beneficial ownership information to the data aggregator. Pre-reconciliation would occur before proxy forms are mailed and then the issuer would distribute proxies, not voting instruction forms ("VIFs").

SROs should play a key role in working with the industry to develop a method to implement pre-reconciliation. The elimination of over-voting and under-voting requires the inclusion of key industry participants to develop an appropriately transparent and auditable solution.

2. Vote Confirmation

Under the current voting system, it is difficult or impossible for an investor to determine whether its shares have been voted in accordance with its instructions. Often no single person possesses all the information necessary to determine whether each vote is received timely and accurately recorded.

As noted in our above comment regarding over-voting and under-voting, each participant within the process, whether a third-party service provider, a securities intermediary or a vote tabulator, should have a delineated list of persons or entities that are entitled to vote and, when votes are received, be able to trace these votes to registered and beneficial owners by control

number or otherwise. A registered owner or beneficial owner should be able to determine whether or not its shares were received by the vote tabulator and the issuer and were counted in accordance with its instructions.

3. Proxy Distribution Fees

Under current SEC and NYSE rules, broker-dealers and banks must distribute proxy materials to their customers, but the issuer must pay those costs. Moreover, Broadridge Financial controls approximately 99% of the beneficial owner volume and thereby has a monopoly over the proxy distribution process. Because the fees are paid by issuers and their shareholders, the SEC should foster development of a system that enables issuers to become key decision makers and active participants. Though the reimbursement rates for those costs are set by the NYSE, subject to SEC approval, a system of real competition with a negotiated fee structure would result in better service, lower costs and, most importantly, choice among service providers. Separating the current functions of beneficial owner data aggregation and proxy communications distribution would provide issuers the opportunity to select a distribution provider of their own choosing in a fair market environment.

The development of the current system began in the late 1960s and early 1970s with the establishment of the National Securities Clearing Corporation and ultimately the Depository Trust Company and Clearing Corporation ("DTCC"). Moving away from paper certificates to an automated system was one of the significant innovations of the early 1970s in the aftermath of the paper crunch that began in the late 1960s. DTCC evolved in a manner allowing it to settle significant amounts of securities and the related flow-of-funds transactions on a daily basis. The industry should also allow communications with security holders to proceed in a manner that reflects the automated nature of this market. DTCC or a similarly situated organization could perform the same function with respect to shareholder communications and voting in an efficient manner. The existence of a central not-for-profit data aggregator such as DTCC would allow for open communication with respect to distribution and tabulation services. Having a not-for-profit utility processing records at a relatively nominal cost would encourage issuers to further engage their shareholders and increase proxy voting participation.

We urge the SEC to consider the use of a central data aggregator subject to SEC oversight to collect beneficial ownership information from all securities intermediaries and then provide this information to any agent that the issuer chooses to distribute its proxy material.

4. Issuer Communications with Shareholders

The votes of retail shareholders have been marginalized by many factors. These factors include the: (i) current NOBO/OBO system, (ii) impact of amended NYSE Rule 452, (iii) lack of investor education, and (iv) activity of certain activist shareholders and the current system of proxy distribution. This new system should be established to enable issuers to engage and directly communicate with retail accounts, which will in turn increase retail owner participation in the proxy voting process.

The NOBO/OBO system is cumbersome, serves no regulatory purpose, and prevents public companies from knowing or communicating with many of their shareholders.[2] Many retail

[2] At least one member company has indicated that it knows the names of less than 10% of its individual investors and obtaining the names of even these few NOBOs adds unnecessary delay and significant expense to the proxy process.

shareholders often do not understand the NOBO/OBO distinction or how the street name voting process works. Additionally, the current VIF system is confusing to investors. For instance, several of our members have experienced instances in which beneficial holders attend shareholder meetings and attempt to vote in person using VIF forms.

Issuers use a customized proxy card with the company's logo, larger font and consistent description of the agenda items for registered shareholders and attain higher voting percentages. Permitting an issuer to distribute a uniform company-specific proxy card and have a single register for voters would encourage retail voting, permit all shareholders to vote at the meeting and simplify the audit trail.

Eliminating the outdated NOBO/OBO classification rules would also enhance transparency of share ownership and foster direct communication between issuers and their shareholders. Investors could still have the option to remain anonymous through the use of a custodial account. In these instances, however, the investor that requests anonymity, rather than all the shareholders of the issuer, should be responsible for the additional expenses related to the distribution of proxy material to that investor.

In addition, allowing the issuer to know the identity of all beneficial holders would provide the issuer with a way to understand its shareholder base and why certain classes of investors chose to own its securities.[3] Issuer communication with shareholders is particularly critical due to the increasing prevalence of a majority vote standard in the election of directors, the elimination of broker discretionary voting for director elections and compensation matters, universal say-on-pay votes and, potentially, proxy access director nominations. Further, granting issuers access to beneficial ownership information at all times would allow issuers to communicate with investors outside of the annual or special meeting process, in order to proactively engage in investor relation activities and such as soliciting and responding to shareholder concerns.

Accordingly, we support the elimination of the current NOBO/OBO structure. We urge the SEC to adopt a system that permits companies to communicate directly with all of its shareholders.

5. Means to Facilitate Retail Investor Participation

Investor education, Internet platforms and Internet distribution are all key to facilitating investor communications. There are numerous blogs and websites available for investor-to-investor communication, but we support continued efforts by the SEC, the Financial Industry Regulatory Authority ("FINRA") and the national equity exchanges to educate investors and facilitate communications.

In addition, with respect to Notice and Access ("N&A"), allowing an issuer to send a proxy card with the initial N&A materials would allow a one-step, instead of a two-step, process for retail shareholders to vote. Although a shareholder could submit the proxy card without reading the disclosure materials, a two-step process does not force shareholders people to read, but instead discourages them from voting. If shareholders have the proxy card in hand when they receive the notice of Internet availability, they can access the disclosures electronically, read them and submit their proxy cards immediately.

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[3] If desired, the SEC could adopt rules preventing issuers from making any use of shareholder information other than communicating to the shareholder in connection with the annual meeting or special meeting or other matters of relevance to shareholders generally.

A number of our members have not adopted N&A in part due to the 40-day advance delivery requirement. Given their current Form 10-K publication schedule, it is difficult for these issuers to implement N&A without: (i) increasing staff in their finance and legal departments and (ii) modifying board and committee calendars to accommodate the accelerated proxy deadline. Some of these members have conducted cost-benefit analyses on N&A and concluded that any savings would not justify the increased cost and stress of adoption. The SEC should shorten the mailing date of N&A to the earlier of: (i) 30 days, or (ii) the same day as the first full set mailing. As the SEC suggested in the Concept Release, aligning deadlines with full set delivery option would increase adoption of N&A and in turn ease the burden associated with a combined delivery schedule

Finally, as a result of the approval of amendments to NYSE Rule 452, voting by retail street name holders has decreased. While the current VIF system remains effect, we support allowing investors to give brokers "advance voting instructions" to increase participation. These instructions could be renewed periodically or could remain as a "permanent default" until the investor affirmatively changed the instructions or directions.

6. Proxy Advisory Firms

The power and lack of accountability of proxy advisory firms because of the multiple functions they perform in the markets and the limited oversight of these firms is of concern to several public companies.

First, proxy advisory firms should be required to disclose the process and methodology they employ to gather information about issuers to ensure that their procedures are adequate. Issuers should be afforded a specific period of time to respond to draft reports. Five business days may be an appropriate period and there should be a formal and disclosed "appeals" process to enable issues to address recommendations based on incorrect factual or objective data. Proxy advisory firms should be required to publish in their reports any issuer disagreements with contested data used in the process of determining a recommendation.[4]

Second, the SEC should require proxy advisory firms to disclose publicly actual and potential conflicts of interest. Some proxy advisory firms currently advise issuers for a fee with respect to ballot matters through their consulting divisions, while another division, also for a fee, advises institutional investors how to vote on these same matters.

Third, a growing number of investors, particularly those known as "quantitative funds," simply outsource the voting function to a proxy advisory firm. For market transparency, these quantitative funds should have to disclose if they have outsourced their voting rights to a proxy advisory firm, and if so, to which firm. Given the outsourcing of proxy voting to advisory firms, we ask that the SEC consider revisiting the fiduciary rules that mandate each firm vote its shares. Specifically, we question whether Rule 206(f)-6 under the Investment Advisers Act of 1940 ("Advisers Act') is violated by the complete outsourcing of the function to a third party proxy advisory firm that does not share the fiduciary obligation.

Fourth, given the de facto control over voting by some proxy advisory firms, the SEC should consider whether this level of control renders these firms "beneficial owners" of the shares in question, requiring Schedule 13G or other disclosure.

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[4] Although an issuer could file its disagreement as supplemental proxy soliciting material with the SEC, this would disseminate the proxy advisory firm's report more widely and require the issuer to incur additional cost that would be borne by shareholders.

Accordingly, the SEC should regulate these proxy advisory firms by either: (i) requiring all proxy advisory firms to register under the Advisers Act, or (ii) establishing a separate regulatory oversight system.[5] In analyzing whether registration under the Advisers Act or a separate form of oversight is more appropriate, the SEC's goal should be to instill accountability, transparency and integrity into the proxy advisory firm process. We support giving the SEC authority to: (i) require these firms to register, (ii) examine these firms' practices, (iii) require them to establish processes and procedures that are auditable, and (iv) issue sanctions if they breach their responsibilities.

7. Advance Notice of Record Dates

We oppose requiring issuers to provide further advance notice of the meeting agenda. Most issuers currently distribute notice of their meeting agenda 30 days or more in advance of the meeting.[6] Further, advance publication of meeting agendas would create problems with the Board approval timeline and other internal approval processes and reduce the time available to negotiate amicable resolution of shareholder proposals. A Board should always retain the flexibility to add appropriate agenda items rather than be forced to call a special meeting of shareholders or wait a year for the next annual meeting.

A more appropriate solution would require institutions that have loaned portfolio securities either to: (i) contract to obtain voting rights on the loaned securities or (ii) contract with the borrowers of those securities to grant to the lending institution a proxy to vote the shares if the lender cannot recall the shares on a timely basis. Investors often realize significant revenue from their share lending activities and, therefore, should bear the burden of arranging for voting rights to be granted to them or of missing a vote if they fail to recall their shares for an upcoming meeting. It is unfair to impose an additional regulatory burden on issuers and all shareholders solely to preserve the profitability of share lending practices.

8. XBRL and Data Tagging

The driving force behind XBRL or "data tagging" an issuer's financial statements and footnotes is to provide analysts and others with a standards-based method to compare, contrast and model financial information among many different issuers to enable these analysts and investors to make investment recommendations or choices. The information contained in a proxy statement, however, is much more narrative and used by a different audience for different purposes. Proxy statement information is used to make voting decisions on specific matters based on specific facts and circumstances. While no decision is made in a vacuum, shareholders generally vote on a proposal on its own merits.

Unlike financial data, it may be difficult to conform proxy material to a fair and complete XBRL presentation. For example, a number of items disclosed in the Summary Compensation Table are subject to considerable interpretation (e.g., valuation of perquisites, presentation of probable value under ASC Topic 718, and valuation of certain SERP payouts) that can only be

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[5] We note that some proxy advisory firms are already registered investment advisers with the SEC. Even for those that are advisers, the SEC's examination program may not necessarily focus on the proxy advisory firm's practices and the conflicts of interest we articulate above.

[6] Under the new rules Facilitating Shareholder Nominations, currently stayed by the SEC, if an issuer changes the date of its annual meeting and, therefore, the date that shareholder nominations pursuant to Rule 14a-11 need to be submitted to the issuer, the issuer must disclose the new deadline in a Form 8-K filed by the issuer within four business days of the date it determines the meeting date. Accordingly, we believe that further notice is this area is not required.

clarified in the accompanying footnotes or additional tabular disclosure. Therefore, to achieve true comparability, issuers would need to consider both tabular and footnote tagging. This would not be an easy task to incorporate into existing Board and SEC filing timelines without considerable time and expense.

Furthermore, the average shareholder does not have, or desire to obtain, the tools necessary to read XBRL data. Accordingly, the time, cost and effort associated with requiring issuers to data tag proxy and voting information would far exceed the inherent value.

Finally, adoption of XBRL tagging for proxy materials would unnecessarily delay publication and dissemination of proxy materials. In our members' experience, XBRL tagging adds a day or two (at least) to the production and filing process. As addressed in the Concept Release, any delay in the publication and dissemination of proxy materials could negatively affect the vote outcome among retail investors.

Some of our members communicate with analysts regarding their use of XBRL information. These analysts have identified little to no interest in XBRL. Given the substantial time and effort associated with XBRL tagging, and the apparent lack of market demand for this information, we urge the SEC to study market need and to await broader use of, and experience with, XBRL-tagged Exchange Act reports before considering expanding the requirement to proxy materials.

Based on the foregoing reasons, we believe the marginal benefit of XBRL tagging of proxy data is outweighed by the financial cost borne by all shareholders and the possible loss of retail participation.

9. Dual Record Dates

While our member companies believe in the appropriateness of investors having an economic interest at voting time, none of them contemplate using a dual record date system to achieve that objective. The prevailing sentiment is that dual records dates would create more confusion and expense for the issuer and its shareholders, with little to no change in voting participation. As a result, we do not support the implementation of dual record dates.

10. Empty Voting and Related Decoupling Issues

Record dates are often 40 days or more prior to the date of an annual or special meeting, which allows for some turnover in the ownership between the record date and the meeting date, thus creating the potential for empty voting by some shareholders.

We have serious concerns with shareholders that may be entitled to vote, but no longer have an economic interest in the issuer or that have a negative economic interest in the issuer. We support further SEC consideration of this area, and generally support:

1. limiting voting rights to economic rights in accordance with state law or the issuer's articles and bylaws;

2. requiring all voters submitting proxies or VIFs to represent that their economic rights were equal to or greater than their voting rights and will continue to be so on the meeting date; and

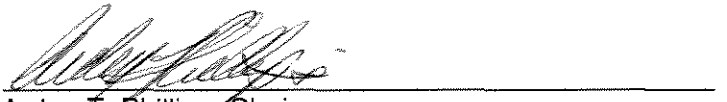
3. if neither of the above were applicable, setting a threshold less than the Section 13(d) and (g) five percent levels for investors that had voting rights in excess of their economic

rights, and requiring these investors to file on an SEC form promptly, and in any event, at least five business days prior to the meeting date, disclosing their total voting interest and the disparity between their economic and voting interest.

We appreciate the opportunity to comment on the Concept Release and are available to provide you with further information (including additional anecdotes from practitioners and issuers' counsel) if you would find it helpful.

Respectfully submitted,

THE ASSOCIATION OF CORPORATE COUNSEL
CORPORATE AND SECURITIES LAW COMMITTEE

By: 
Arden T. Phillips, Chair