MOXY VOTE

October 20, 2010

Elizabeth M. Murphy, Secretary

Securities & Exchange Commission
100 F Street, NE
Washington, DC 20549
Re: File No. S7-22-09

Dear Ms. Murphy:

On behalf of Moxy Vote I submit these comments on the publication entitled *Concept Release on the U.S. Proxy System.*

Moxy Vote is web-based application designed to facilitate proxy voting by individual investors (moxyvote.com). Moxy Vote is an agnostic platform that facilitates the exchange of corporate governance information in an effort to empower the retail investor. It provides individuals the ability to receive ballots and submit votes electronically with the goal of increasing participation and making the process more efficient (thereby lowering costs for issuers). Individual investors have historically been reluctant to get involved in corporate governance as evidenced by their low response rates to proxy mailings. Moxy Vote endeavors to change this and will engage shareholders by igniting their passion around environmental, religious, social or other governance-related issues. Through Moxy Vote, an investor can build customized voting policies that are issues-focused to drive change in areas that are important to them while, at the same time, lowering proxy-related expenditures for the companies that they own.

Moxy Vote appreciates the Commission's interest in improving the corporate governance process. We believe that the proposal contains some useful suggestions for reforms to the current system and will promote a much needed dialog among industry participants. As a key stakeholder in this corporate governance process and one of the few voices representing the individual ("retail") investor, Moxy Vote has elected to respond to every question in the Concept Release for which it has relevant information. Those responses are included in "Part II" of this document. "Part I" of this document highlights, in much greater detail, the most critical issues that inhibit retail voter participation. On these more critical issues, Moxy Vote requests the Commission's urgent attention.

We appreciate this opportunity to comment and look forward to the Commission's continued efforts in this area. Please do not hesitate to contact me at larry@moxyvote.com if there is anything further that we can provide.

Very truly yours,

/s/ Larry Eiben

Larry S. Eiben
Principal

PART I – Urgent Issues

The Moxy Vote thesis can be summarized as follows:

- It is the right of every shareholder to have an equal opportunity to vote one's shares regardless of the number of shares held.
- Retail shareholders are reluctant to vote largely due to voting processes that severely disadvantage retail holders, but instead cater to large institutional shareholders.
- Internet-based proxy voting platforms provide the greatest hope of engaging the retail shareholder.
- There are substantial barriers to the development of retail-focused voting platforms.
- The Commission should work to eliminate these barriers.
- Without the barriers, internet-based retail voting platforms will flourish leading to improved voter participation and more informed voting decisions.

Retail Voter Engagement

Presently it is estimated that approximately 25-35% of shares of public companies are held directly by individual shareholders with an even higher percentage if mutual fund shares are included. This segment of the shareholder base is notoriously unresponsive in regard to completing and submitting proxy ballots or providing voting instruction forms ("VIFs") - the latter in the case of shares held at banks and brokers. The primary reasons for low voter turnout are the following:

- inefficient voting methods (i.e., typically by paper or phone) that are significantly less attractive than those offered to institutional investors
- a lack of information to permit an informed voting decision

and, to a lesser degree,

- a lack of a sense of relevance (i.e., a feeling of "what good will my vote do?")
- a lack of knowledge regarding the process and the right to vote

The result of this lack of participation among retail shareholders is a system of corporate governance that could be greatly improved. At best, the current voting system is built to satisfy the needs of institutional investors and, at worst, the board and senior executives of some public companies are left with little accountability for their actions (i.e., given the ability to achieve "quorum" via the "broker vote" in instances where retail voters fail to respond). Moreover, retail investors do not always have interests that are aligned with institutional shareholders. Therefore, it is not an ideal solution to only have institutions participating in the corporate governance process.

Electronic Voting Platforms – The Solution for Retail Voter Engagement

Currently, all institutional shareholders (e.g., mutual funds, pension funds, Registered Investment Advisors) have an opportunity to vote their clients proxies electronically through one of several internet-based electronic voting platforms (e.g., as provided by Broadridge, RiskMetrics, ProxyGovernance, Glass Lewis). The process is very efficient and greatly reduces costs for issuers and voters. The ballots are delivered electronically to a web-based application and the votes may be submitted from within the same application. Moreover, voters may create standing proxy voting "policies," (which are sometimes referred to as "Client-Directed-Voting" in the retail-voter context) such that they do not need to return to the site to vote each ballot individually. The voting policies, on the institutional sites are supported by research that is used to inform the voter and improve the quality of the vote. The research is often provided by the application provider (e.g., RiskMetrics) or the platform provider may develop connections to third-party research (e.g., as is the case with Broadridge's "ProxyEdge" platform which provides access to research from Glass Lewis, among others).

This system appears to serve the interest of institutional investors, and there is no reason to deny retail investors of the same efficiencies and conveniences. Indeed, the development of internet-based voting platforms for *retail* investors is the solution to all of the issues listed above that lead to low voter participation. Specifically, electronic platforms can seamlessly connect voters with relevant data at the very instant that they are voting. Moreover, group participation with other like-minded retail voters through electronic platforms will strengthen the "voice" of the retail voter thereby empowering the voter. Also, profit-seeking retail platforms will commit resources to educating the investing public regarding the overall process and its importance. This will be required because of their desire to attract and retain users. Finally, electronic voting platforms are simply far less cumbersome to the voter than the prevalent voting methods (i.e., returning a business reply envelope or placing a phone call). With Client-Directed-Voting, the latter point becomes even more compelling as voters may elect to create policies (i.e., pre-defined voting logic) that will reduce the ongoing burden to them.

The voting tools of the future, like Moxy Vote, will allow investors to receive ballots electronically and will provide access to data that is relevant for a given vote while simplifying the overall voting process. These tools will translate ballot agendas into "issues" that ignite passions in users thereby rallying the shareholders to take action. These platforms will enable voters to quickly and easily share ideas and compare notes in an effort to make the best possible decisions. Users will be assisted in their effort to "align" with various advocate organizations (e.g., the environmentalist may elect to vote according to the recommendation of the Sierra Club). The internet is revolutionizing the way that society interacts and this will extend to proxy voting if the Commission's rules facilitate it. These platforms provide the best opportunity to remedy the lack of retail voter participation so the Commission should focus its efforts on leveling the playing field by breaking down barriers that retail platforms currently face. At present, these barriers make it very difficult for a service provider like Moxy Vote to survive, let alone thrive.

Why have retail platforms failed to develop?

The electronic voting platform that exists for institutional investors today is similar to the model for the platform that should exist for retail investors. There are several reasons, however, for why the retail voting platform has failed to develop in a material way. These reasons are listed below and are covered in greater detail in the sections that follow.

Barriers to Retail Voting Platforms

1. Brokerage/bank industry (unfair treatment of *retail* investors)

2. Vote submission costs

3. Structural issues that deter capital investment

4. Proxy solicitation exemptions

Reason #1 – Brokerage/Bank Industry (Unfair Treatment of Retail Investors):

Per NYSE and FINRA regulations, custodians, including retail and institutional brokers, are required to deliver VIFs to the beneficial owner (i.e., the shareholder) or to a designated Registered Investment Adviser ("RIA"). As a practical matter, the vast majority of these firms have outsourced this work to a proxy distribution agent (e.g., Broadridge, Inveshare, Mediant) with Broadridge controlling the vast majority of VIF deliveries regardless of the chosen method. For retail investors, the industry has come to define "to the beneficial owner" to mean to a given *physical* or *e-mail* address whereas, for institutional investors, the acceptable delivery method has expanded to include electronic voting platforms. So, at present, most custodians have built the internal processes to handle the following types of delivery requests:

Delivery Method	*Supported for Retail*	*Supported for Institutional*
Paper copy to a physical address	YES	YES
Electronic mail to an electronic mail address	YES	YES
Electronic ballot to a Web-based proxy voting platform (e.g., Moxy Vote)	NO	YES

Moxy Vote is a firm that has facilitated hundreds of requests to custodians (mainly brokers) by retail shareholders seeking a change in their delivery address to a web-based electronic voting platform. We can confirm that retail custodians are often unwilling to deal with these requests because they are a departure from the current norm. Moxy Vote is aggressively working with these firms to address their issues and many firms are proving to be willing and capable of delivery to moxyvote.com by way of their proxy distribution agent. However, many retail custodians simply do not honor their clients' requests to have votes delivered to electronic voting platforms like Moxy Vote. In general, it has been very difficult for Moxy Vote to get to the proper decision-makers at various firms as evidenced by the excerpts of actual e-mail exchanges below.

Example 1 (large retail broker)

Retail Broker #1: "I sent your e-mail on to Jane and she said that she is not the one to make the decision. She is getting the question in front of the decision makers. There is a group looking at this and I believe they have looked at your website. I also sent Jane a copy of the Moxy Vote material Larry had sent me. I will let you know"

Moxy Vote: "John, Sorry to be a bother. Just wondering if you have heard anything back from Jane. Also, I was hoping you could remind her and her team that I will be in <broker location> the week of the 25th and would love the chance to sit down with her/them in person to discuss."

Retail Broker #1: "I did hear back from them and they are not interested at this time in providing that service to their clients."

Note: Jane and John are made-up names to protect the privacy of these firms.

Example 2 (another large retail broker)

After re-initiating conversations that started three months earlier,

Retail Broker #2: "I discussed this with my Legal team in May so I can't remember all that we discussed. However, the issue is that because we have no contract with Moxy Vote, we are uncomfortable with delegating the responsibility of handling our proxy process even for clients who choose to use you. In addition, while the client would be authorizing us to provide the information at a point in time, we are very sensitive to providing any third party our client's information on a regular basis especially without a contract. I hope this explains our position more clearly. If you have any questions, please feel free to contact me via email or at XXX-XXX-XXXX."

Moxy Vote: "Thanks for the update. At this point, I'd love to come in and meet with the right people to better explain how exactly this whole process works and what exactly we're asking <retail broker name> to do. We left off a lot of details back in April that probably made it hard for the lawyers to get comfortable with the process. I have a new presentation that I can give that more clearly articulates the requirements and many brokers are finding that they're quite "doable." Would you be able to arrange a meeting for me?"

Retail Broker #2: "Sure. Do you want to meet face to face or a conference call? I own the proxy process for our retail brokerage unit so I would be the one to talk to."

After 3 subsequent efforts by Moxy Vote to set a face-to-face meeting date over a period of two weeks, the broker declined a meeting and is still unwilling to delivery ballots to Moxy Vote

Such resistance – unsupported by specific objections other than vague concerns from "the lawyers" – is an impediment to the development of a user-friendly delivery system. We respectfully urge the Commission to validate the existing NYSE/FINRA rules by requiring brokers to honor client instructions to deliver to a web-based voting platform. Indeed, as we explain more fully in response to the Commission's specific questions, this issue is at the heart of any effort to improve the participation of retail shareholders in voting their shares.

Our research, thus far, suggests that brokerage firms may be able to accommodate a change of delivery to moxyvote.com with very minimal investment or effort. Broadridge Financial Solutions, for instance, has informed us that if the brokers are simply able to create a "proxy delivery address" in their record-keeping systems for retail clients, the Broadridge processes can accommodate delivery for retail clients to electronic platforms without further programming. Intuitively, this appears to be an easy fix for the brokerage industry.

We're encouraged that the brokerage industry, on aggregate, seems generally supportive of the goals of sites like Moxy Vote. For example, as a group, the Securities Industry Association, in a letter dated February 13, 2006 and made available through the comment links from this Concept Release, make the following statements:

> *"The Commission should urge issuers and intermediaries to work together to build on the current proxy delivery system and do more to educate and encourage shareholders to use electronic delivery processes."*
>
> "*Beneficial owners should be able to easily indicate their delivery preferences…"*

It's clear from the comments above that there may be a divergence between the brokerage industry's consensus opinion and the actions of a few brokerage firms. Or, perhaps they simply need public acknowledgement from regulators that a web-based voting platform constitutes a valid delivery address. Moxy Vote is eager to engage brokers but it appears that brokers are in need of a regulatory "nudge." <u>This issue is among the largest barriers to the success of services like Moxy Vote.</u>

What action should the Commission take?

The Commission, working in conjunction with NYSE and FINRA, should immediately provide guidance to make it abundantly clear to all custodians that an electronic voting platform is a valid address for the purposes of proxy ballot and VIF delivery for retail investors. More specifically, these firms should be required to make the necessary system adjustments to accommodate such requests and be able to clearly articulate to any retail shareholder how they may change the delivery address to an electronic platform. The need here is to provide equal treatment and avoid subtle (and unintended) discrimination against retail shareholders. Institutional investors face a distinct advantage in that the bank/brokerage industry has already established these procedures for them. Retail investors should be afforded the same treatment and should have the same opportunities to utilize these electronic voting platforms. Unfortunately, banks/brokerage firms have no direct incentive to improve their record-keeping systems to facilitate this action. In fact, they see these improvements as impediments to other projects that are considered more valuable. Therefore, they must be *required* to comply. Without a specific requirement to recognize platforms like moxyvote.com as a valid delivery address for retail clients, platforms for retail clients will not likely become a reality. Please note that Moxy Vote is supportive of some reasonable set of requirements by platform providers (including SEC registration) to limit participation to firms that have sufficient operational infrastructure to properly facilitate voting. Fewer platform providers will make implementation easier for all parties and will increase comfort with the process.

Reason #2 – Vote Submission Costs:

Presently, the vast majority of institutional investors hold shares at banks/brokers and vote shares through an electronic voting platform. Typically, they pay a fee to the platform provider (e.g., RiskMetrics) who is under contract with the bank's/broker's distribution agent (e.g., Broadridge) to receive ballots, gather votes from shareholders and forward votes back to the agent for tabulation. The agent charges the platform provider a fee for submitting votes back to them. So, as would be expected, the platform provider generally passes along this cost to the voting shareholders. Given that these costs are being pushed down to the shareholders, we have a situation where voters are, in effect, paying to submit votes. This set-up presents an inherent flaw in the system that has largely gone un-noticed because the fees are presently not cost-prohibitive to most institutional investors and, for most of those voters, voting is not optional.

These costs, however, are absolutely devastating to voting platforms that are trying to service retail investors. The fees are typically charged on a per-ballot basis such that an owner of 1,000,000 shares would pay the same to submit a vote as an owner with 10 shares. This fee structure is a barrier to participation by shareholders with smaller positions (i.e., retail voters). Moxy Vote has determined that, in fact, it may struggle to achieve a profit without changes to the current price structure.

What action should the Commission take?

Moxy Vote recommends a two-pronged solution for the Commission to pursue, (1) work to have the issuers pay the bill for vote submission and (2) work to ensure that these costs are reflective of the operation burden of the distribution agents. On the first point, our contention is that costs for electronic vote collection through electronic voting platforms should be paid by issuers. At present, the proxy distribution agent seeks reimbursement from the issuers for electronic votes collected (per NYSE rules) but, based on current industry practice, this reimbursement does not extend to additional costs incurred by the agent in collecting votes from other unaffiliated electronic proxy voting platforms that interface with the agent. These platforms (e.g., RiskMetrics, Glass Lewis, ProxyGovernance, Moxy Vote) are beneficial for most constituents in the industry and for corporate governance in general. That is, they increase vote participation, increase vote quality and lower issuer costs. So, the fees that these groups are paying to the proxy distribution agent, which are presumably meant to cover basic agent distribution and collection costs, should be reimbursed by issuers. Of course, any charges for non-standard "add-on" services offered by the distribution agent to the voting platform should be paid by the voting platform who may, in turn, sell these services as "value-added" items to their own users. The Commission should work with FINRA and NYSE to clarify the listing standards and member rules to ensure that these fees are subject to full reimbursement.

It's notable that requiring the issuers to absorb the costs for collection of votes from electronic proxy voting platforms should not face much resistance from issuers, despite the reality that electronic vote collection costs will rise. The reason for this lack of resistance is that electronic vote collection (even with intermediary vote collectors like Moxy Vote) will still prove to be far cheaper than any other collection method as electronic vote collection supplants paper voting and mitigates the need for follow-up proxy solicitation. Moreover, competition in the proxy advisory space (and a corresponding drop in fees paid for distribution) will accelerate as new platforms are attracted by the prospect of not having to pay to submit votes.

On the second point, the vote collection fee that is charged by proxy distribution agents (e.g., Broadridge) to proxy voting platforms (e.g., RiskMetrics, Moxy Vote, etc.) likely should, in the short-term, be capped at a lower level than is presently allowed until competitive forces can work to lower the fee. The present fee is many multiples of the fee reimbursement that the distribution agent is permitted to collect (per NYSE rules) for electronically gathered votes. The current fee is cost-prohibitive to retail platforms and, in our opinion, likely substantially exceeds the operational costs incurred by proxy distribution agents (especially at high volume levels). The proxy distribution agents do bear substantial costs for interfacing with proxy voting platforms and they should be compensated. Investigation by the Commission in this area along with greater ongoing transparency would be beneficial in ensuring that these fees are set at an appropriate level.

<u>Reason #3 – Structural Issues that deter Capital Investment</u>:

Moxy Vote, as a relatively new participant in the industry representing retail voters, has a unique perspective regarding the industry's suitability for business investment. At present, the situation is dour. A capital investor typically looks for an opportunity in an environment where rules are established and free-market competitive factors can determine the winners. Unfortunately, progress in this industry seems to be slowed by current regulatory uncertainty and various mis-aligned incentives (e.g., broker's controlling the proxy distribution decision but not paying the bill). Moxy Vote has nonetheless invested substantially in this market. Why? This is a testament to the *potential* opportunity that exists with a few key structural and regulatory changes rather than the current business prospects. If changes aren't made, however, Moxy Vote will eventually be forced to abandon its pursuit of a retail-focused site as will any other firms considering it.

There are presently several issues that would deter any firm seeking to build a for-profit voting platform for retail investors. These are the following:

- The lack of a centralized dissemination point for proxy ballots and VIFs
- The lack of an incentive or requirement for proxy distributors to connect to retail proxy voting platforms
- Broker decisions and incentives are not aligned (i.e., the broker chooses but the issuer pays) – leading to the Broadridge risk factor
- The general lack of transparency

In an ideal world for electronic voting platforms, there would be a centralized source for proxy ballot distribution and collection. This structure would enable voting platforms to service any shareholder (i.e., receive electronic ballots, collect votes, and submit votes) through a single relationship with some central proxy disseminator. At present, an electronic voting platform is required to build a connection with Broadridge, Inveshare, and Mediant (to service beneficially-held shares) and all of several dozen transfer agents (to service directly-held shares). Moxy Vote sees the single disseminator as the *ideal* solution but one that is unlikely to materialize. As such, Moxy Vote has conceded that it must endeavor to build connections with all proxy distribution agents and transfer agents. Still, this is an idea that may be worth further investigation.

Moxy Vote's task of connecting to all proxy distributors is already ambitious; however, it is further complicated by the fact that there is no clear obligation for proxy distribution agents to deliver to Moxy Vote. We commented in "Reason #2" above that we believe there is an obligation for brokers to honor a shareholder delivery request, in the case of beneficially-held shares, but it requires SEC endorsement and the existence of any requirement may be altogether missing for transfer agents delivering on behalf of registered shareholders.

On the beneficial shareholder front, it is well known that Broadridge controls the vast majority of the market share. Competing solutions have been developed (i.e., offerings from Mediant and Inveshare) though they've achieved little penetration. The reason for the lack of competitive forces working appropriately in this situation is that brokers are able to choose their proxy distributor and yet the issuers pay the bill. In short, the broker has no motivation to change their proxy distribution agent. Moreover, certain brokers have indicated to us that Broadridge is engaging in fee "rebates" (or, fee-sharing arrangements) such that brokerage firms have a negative economic incentive for leaving.

Broadridge's role in the distribution of VIFs for beneficially-held shares makes them a necessary business partner if your desire is to build value-added proxy voting platforms for shareholders. Though, the same would be true for any proxy distribution agent. This situation creates an unusual risk for all electronic voting platforms that threatens the integrity of the overall process. The RiskMetrics Annual 10-K says it best,

> *"…ISS relies on our data feed agreement with Broadridge Financial Solutions which allows for many ballots to be received and proxy votes to be made electronically, minimizing the manual aspects of the proxy voting process and limiting the risk of error inherent in the manual process.*

If our data feed agreement with Broadridge was terminated, we would have to incur significant expenses in order to input our clients' voting instructions directly into Broadridge's proprietary electronic voting systems and our business and results of operations would be materially adversely affected. Since we also compete with Broadridge in some markets with respect to providing certain aspects of proxy voting services, Broadridge may have an incentive not to renew our data feed agreement when its initial term expires or to offer renewal terms which we may deem unreasonable."

This paragraph exemplifies the challenge and inherent problem with the current set-up in which proxy distribution agents can obtain too much power and control. Broadridge, and other proxy distribution agents, should not have the ability, at their complete discretion, to eliminate a given proxy voting platform. Broadridge's current apparent invulnerability makes this a particularly sticky issue as it opens the door for other potential abuses of power (e.g., the cost-issue described as "Reason #2" above where fees that voting platforms pay may be somewhat non-negotiable). And, it *could* possibly show up in more subtle ways such as poor service levels.

What action should the Commission take?

Assuming that the issuer-proposed solution of a central source for ballot dissemination and collection (like a non-profit co-operative) is perceived to be too daunting of a task, we encourage the Commission to at least focus on changing the rules such that a central mechanism will prove to be a desirable solution for all industry participants. Specifically, as requested in "Reason #1" above, the Commission should pass a rule that states that a shareholder has full control to request that a VIF be delivered electronically to the voting platform of his or her choice (e.g., as one may select a physical address or an e-mail address). This requirement should, of course, extend to those that are doing the delivery. That change alone will accommodate all beneficially-held shares. We would also propose that a similar rule be created to apply to all transfer agents distributing for "registered" shareholders. This rule may prove more onerous and may face greater resistance (given the lack of operational infrastructure at the transfer agents at present) so it would be best to separate it from the first and begin with a solicitation for comment from these participants. If passed, these rules would compel proxy ballot and VIF distributors to "plug in" to electronic voting platforms that are being developed. As a byproduct of this effort, distributors (as a group) may conclude that a central dissemination and collection point may provide a nice solution to the inefficiency of attempting to build an interface with each proxy voting platform separately. Or, in lieu of a central source, such a rule would at least encourage the development of standardized file formats and procedures for electronic voting that would expedite platform development.

Regarding the mis-aligned broker incentive, the Commission may be tempted to permit issuers to control the proxy distribution agent hiring decision given that they are paying the bill. While this may prove to be a viable long-term solution, at present it would prove detrimental to retail shareholders. Retail shareholders are at a great disadvantage based on the reasons cited in this letter. If shareholders are unable to control deliver of their own ballots then quality retail-focused platforms will fail to develop. Without such platforms, shareholder opinions will be influenced disproportionately by company management as voting portals become mere platforms for the management "agenda" without counter-balancing opinions. While Moxy Vote concedes that this change could be the "right" long-term move, it is not appropriate at this time without further regulatory changes identified in this letter and clear support from issuers and brokers of the changes required to facilitate the growth of platforms like Moxy Vote. In the short-term, Moxy Vote proposes an interim solution to this problem. Specifically, the Commission is encouraged to work with FINRA to draft rules that would require (1) that brokers do not accept payments from proxy distribution agents and (2) that brokers must exercise prudent judgment in their selection of a proxy distribution agent. This second point should be strengthened by giving FINRA the ability to penalize brokers that fail, for example, to appropriately justify their selection of agent.

Lastly, the Commission should work to increase regulatory oversight of and transparency into the operations of all firms participating in the proxy voting process (i.e., web-based proxy voting platforms, proxy voting advisors, proxy distribution agents, transfer agents, etc.). All firms handling VIFs or proxy ballots should be subject to inspection and should face compliance with a newly created set of rules customized for the industry. The rules, which largely may be extracted from the Investment Advisor's Act rules, should focus on operational safeguards including disaster recovery, record-keeping, client data security and should include a "fiduciary duty" standard such that one's clients' interests must always be put ahead of one's own. Moreover, the Commission should develop a mechanism for industry participants to provide feedback on parties within the process that may be acting in a manner that is detrimental to the progress of corporate governance with the Commission having authority to investigate and fine firms in an effort to remedy the situation.

Reason #4 - Proxy Solicitation Exemptions:

Since inception, the proxy solicitation rules were written to be quite broad. As a practical matter, nearly any party that is participating in the proxy voting process, whether recommending a particular vote, facilitating a vote, or otherwise seeking to influence an outcome, is considered to be "soliciting" per the rules. As such, these parties may be subject to SEC filing and shareholder notification requirements contained in the rules. These obligations are costly and prohibitive for most participants and have historically served as a deterrent to open communication among shareholders. In 1992, the Commission further modified the rules to facilitate greater communication among shareholders and clearly stated a number of exemptions to the filing and notification requirements. These modifications were a positive step forward for shareholders but they are in need of further update as retail shareholders expand their use of internet-based technology as a communication and voting tool.

In examining the various exemptions, our lawyers have advised us that third parties (providing vote recommendations on moxyvote.com) are exempt from certain obligations per the "disinterested person" exemption. More specifically, they would not be deemed to be subject to the proxy rules (other than a general anti-fraud prohibition) so long as they (1) are not seeking proxy authority (i.e. the power to vote an individual investor's shares on his or her behalf), (2) do not furnish or otherwise request, or act on behalf of a person who furnishes or requests, a form of revocation, abstention, consent or authorization, and (3) do not have some "substantial interest" in the subject matter of the solicitation such that they would receive extra or special benefits that are not shared pro rata by all shareholders voting on the matter. Our counsel, however, also suggested that Moxy Vote would benefit from a modernization of the exemptions that take in to account the types of participants on retail-focused voting platforms. In order for retail proxy voting platforms to thrive, participation by unaffiliated third-party content providers is critical. At present, the ambiguity of the rules (as written) may be deterring some participants. At Moxy Vote, we have witnessed these concerns from first-hand experience during our efforts to solicit various third-parties to participate on the site.

The Commission's concept release is a very welcome development, as it acknowledges the need to update Commission rules to account for changes since the advent of the Internet era. The special role played by retail voting platforms is one such area. When the Commission undertook rulemaking in the 1990s to make clear that companies, such as ISS, were not engaged in solicitation, there was no way of foretelling the rapid expansion of the internet as a tool for connecting people and information . It is therefore important to update the pertinent regulations to account for the existence of new firms such as Moxy Vote that perform an important function by aggregating information of importance to individual shareholders, by letting individual shareholders store and organize that information in ways that are convenient to the individual and by facilitating informed voting.

What action should the Commission take?

First, the Commission should amend the proxy solicitation rules to make it clear that an entity (or, web-based platform) that is merely facilitating communication and voting, without having any discretionary control over the vote (i.e., like Moxy Vote), is exempt from filing and notification requirements. Moreover, further modifications (or at least public comments) should be made to ensure that participation by content providers on electronic platforms, including those providing a vote recommendation, is considered to be exempt from the solicitation rules (other than anti-fraud provisions or the need to file a notice of exempt solicitation if the third party has the requisite holding).

A site such as moxyvote.com is facilitating retail shareholder voting in part by populating a shareholder's ballot based on the recommendation of a third-party (as instructed by the shareholder). The Commission's rulemaking should allow such activity provided that the shareholder has full control over his/her voting "policy" (i.e., the logic that determines which groups are permitted to have influence) along with the ability to modify the vote until the voting deadline.

Part II – Responses to Selected Release Questions

III.A.4

Q: Would requiring broker-dealers to disclose their allocation and reconciliation process adequately address the concerns related to over-voting and under-voting by beneficial owners?

A: In regard to retail shareholders, no. The assumption here is that disclosure will change investor behavior such that "good" brokers will be rewarded and "bad" brokers will be penalized. Retail investors are not likely to review these disclosures or take action based on them (e.g., terminate an account) so the desired effect will not materialize. Moreover, retail clients have less leverage to control broker actions in that they, on average, are less important to a given broker than a single institutional client.

Q: Would information about vote allocation and reconciliation methods be helpful to investors or adequately address any concerns related to those processes?

A: Yes, the information would be helpful and may eventually lead to changes in investor behavior but additional regulatory oversight, combined with an industry-driven of "best practices," is recommended in lieu of expecting action by retail investors based on these disclosures.

Q: Would a particular type of vote allocation and reconciliation method better protect investors' interests?

A: The Pre-Reconciliation method is more appropriate but, admittedly, more difficult to implement. Of course, that method is also subject to potential abuse depending on which clients are receiving the right to vote (e.g., is it the larger, more valuable, non-retail clients?). With the Post-Reconciliation method, certain types of investors are clearly favored (i.e., those responding to a vote). While, at first, that approach may seem reasonable; it is entirely unfair to retail investors. At present, retail investors are not afforded the same efficient voting opportunities that are enjoyed by institutional voters (i.e., many brokers are presently refusing to forward VIFs to electronic voting platforms). In summary, we would encourage greater transparency around this entire process and further regulatory investigation to ensure that retail investors are not being inadvertently disadvantaged.

Q: Should investors who have fully paid for their securities be allocated voting rights over those who purchased the securities on margin? Should beneficial holders be allocated voting rights over broker-dealer proprietary accounts?

A: A shareholder owns an economic interest in a company whether shares are owned outright or held on margin. As such, both parties should have an equal right to a vote. Broker-Dealers should also have a right to vote if they hold shares in proprietary accounts. However, broker-held shares create a conflict of interest where a broker may elect allocation methods that favor them over a client. As such, this area presents the potential for abuse and therefore should be tested during regulatory exams.

Q: Should brokers be required to disclose the effect of share lending programs on the ability of retail investors to cast votes.

A: Yes, an investor should not have their shares lent without permission. And, permission should be granted with an affirmative action by the client and not in the fine print of an agreement. It is our opinion that very few retail investors are aware that (a) their shares may be lent and (b) that it could result in weakening their economic interest (i.e., by watering down their voting power).

III.B.3

Q: To what extent have shareholders had difficulty in confirming whether their submitted votes have been tabulated?

A: Moxy Vote presently submits votes back to a single proxy distribution agent hired by the broker-dealer utilized by Moxy Vote clients. The agent is unwilling to confirm whether or not a vote has been submitted and counted. Rather, we are alerted to when an attempted electronic file transfer (i.e., vote submission) fails. So, the assumption is that, in the absence of a failure, the vote was processed and counted. Moxy Vote clients have expressed concern about the integrity of the system and have specifically inquired as to what evidence we can present to them to confirm that a vote has been processed. Our current response to that question, a description of the process described above, fails to satisfy many of them and deters participation.

Q: Should all participants in the voting chain grant access to their share voting records to issuers and their transfer agents/vote tabulators, for the limited purpose of enabling confirmation of a shareholder's vote? What are the benefits and costs associated with sharing such information?

A: We don't necessarily believe that granting access is needed but every participant in the voting chain should (a) maintain records of all votes processed, (b) be able to confirm that they have processed the vote (i.e., carried it up to the next level in the chain) and (c) upon request, produce evidence of such. This evidence (audit trail) should be available for regulatory review in the event that problems arise.

Q: Should investors also be able to obtain access to share voting records for the limited purpose of enabling an audit of the shareholder vote?

A: In our experience, retail investors don't generally have the time or expertise to "audit" a vote. Anecdotal evidence suggests to us that Investors would expect that the overall proxy voting process be subject to some level of regulatory scrutiny. We would also recommend that investors be given an opportunity to present "tips" to regulators who could then perform necessary investigations.

Q: Should proxy participants periodically evaluate and test the effectiveness of their voting controls and procedures? If so, to whom should the results of these tests be disclosed? Should disclosure be to the Commission, to clients, or also to the public?

A: All participants in the proxy voting process should be regulated by the Commission and subject to periodic exam. Similar to RIAs, participants need not publicly disclose internal testing results but should maintain records and be able to provide them upon examination by the Commission. We believe that examinations will result in tighter operating procedures and fewer operating errors. More importantly, the ability of the Commission to fine participants for material compliance failures is a powerful performance incentive.

III.C.2.c

Q: Should the Commission propose a rule to require issuers to disclose publicly the meeting agenda 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 the proxies?

A: A key question here that should be addressed first is, "what is a material matter?" We have spoken to a securities lawyer that would take the position that *all* matters could be considered material. As such, it may be prudent for the Commission to first comment on that question. If all matters are deemed material, it could have a huge (likely negative) impact on the institutional investing industry as all institutional investors would be racing to pull back shares on loan for the same securities at the same time which could prove disruptive. Given that issue, it's recommended that the voting decision should be left to the shareholder or the shareholder's RIA without any explicit requirement to vote.

III.C.3.c

Q: Should Form N-PX require disclosure of the actual number of shares voted? Should Form N-PX require disclosure of the number of portfolio securities for which a fund did not vote proxies because the securities were on loan or for other reasons?

A: We have learned through our discussions with other governance experts that providing concrete evidence of the vote decision along with shares totals (i.e., like a vote "receipt") can be problematic as it presents an opportunity for votes to be sold. As such, it's generally not advisable. Speaking as retail investors ourselves, we find the current process generally sufficient to understand the voting behaviors of a mutual fund despite the challenges presented by share lending. For example, whether they vote 1 share or 10,000, the 1 share vote shows you the fund's opinion. Moreover, we have seen no evidence that mutual funds are "window dressing" for the purposes of misleading investors.

III.D.3

Q: Does the current fee/rebate structure reflect reasonable expenses? Why or why not? If not, how should these rates be revised?

A: In general, proxy distribution agents should not be permitted to "rebate" fees to broker firms. Whenever present, these types of fee sharing arrangements generally hinder competition and are not fully understood by stakeholders in the process. There may be some justification for these fees but there is not enough transparency to draw that conclusion. And, if the fees are justified, they should be outlined in the FINRA/NYSE/SEC rules and billed separately to the issuer to permit easier evaluation by regulators and various "working groups."

Q: Should the fee structure allow for reimbursement of the Incentive Fee on an ongoing basis once the paper mailings have already been eliminated?

A: Possibly, but not likely. The incentive fee should probably be a fee that is reflective of the work that is performed to convert a shareholder from paper to a less expensive form of delivery (and, as a matter of policy, perhaps to lessen the blow to the operations of the proxy distribution agents as the world moves away from paper delivery). In general, we would encourage a closer examination of this fee (i.e., how much has been paid, did it achieve the desired intent) to determine if it makes sense to continue it. Moreover, we would recommend that the fee immediately begin to be paid to the firm that actually achieves the "conversion" (i.e., gets the shareholder to change their delivery preference to electronic delivery). At present, electronic voting platforms, like Moxy Vote, are spending substantial investment capital to achieve these conversions while the fee is being earned by the proxy distributor. A more strategically directed "paper suppression" incentive fee would accelerate the growth of retail-focused electronic voting sites like moxyvote.com which, in turn, would lower overall costs for issuers.

Q: Does the current fee structure discourage issuers from communicating with beneficial owners beyond delivery of the required proxy materials?

A: Possibly, but indirectly. An argument could be made that paper processing is more profitable to proxy distribution agents than electronic delivery. Or, at least, that it results in higher revenue even if not a higher profit margin. As such, proxy distribution agents may not have a clear incentive to move away from paper ballots and this process may be occurring more slowly than would be possible if proper incentives are in place. Given the greater expense of paper delivery over electronic, issuer and other shareholder communication is being silenced to some degree until electronic communication methods become more prevalent.

Q: Should there be an independent third-party audit of the current fee structure, as recommended by the Proxy Working Group?

A: Yes, an opinion from an independent consultant would be beneficial. We would suggest that they be tasked with making recommendations as to ways to improve the current fee schedule to entice changes that are aligned with improved corporate governance (i.e., more votes and more informed voting through electronic voting platforms).

Q: Currently, SRO rules do not set rates for reimbursement of expenses associated with the notice and access model. In the absence of SRO rules, on what basis do market participants currently determine *whether the reimbursement of expenses associated with the notice and access model is, in fact, reasonable?*

A: Given the absence of competition at present, it is recommended that these fees be regulated and capped. In the absence of a cap, these fees will migrate toward the level of fees that are incurred from the alternative solution which may be far higher than is "reasonable." In other words, notice and access is simply a business decision for issues (Is it cheaper? Does it change the vote outcome or impact quorum?) If the results are comparable and it's cheaper, then it will likely be selected. But, "cheaper" is not the ideal benchmark and may not be anywhere near reflective of true operational costs by the distributors.

Q: Does the current proxy distribution system – in which the proxy service provider is selected by a broker-dealer but paid by the issuer – create a lack of incentives to reduce costs for issuers? Should the issuer have more control over the selection and payment of the proxy service provider, and if so, what alternatives to the current system would facilitate this? What are the potential benefits and drawbacks of such alternatives?

A: This issue was covered partly in the response to Part I. Yes, this is a major problem. However, complete control by the issuers may not be required in order to remedy it. The most viable short-term solution to encourage competition may be to create a rule to require brokers to use some "standard of care" in selecting brokers that encourages them to consider competing solutions. This rule will need to be supplemented by FINRA or the SEC having the ability to financially penalize brokers for clear or repeated abuses in which there appears to be no consideration for other service providers.

Q: What factors are currently affecting the level of competition in the market for proxy service providers and their fees? What principles should guide the Commission's current consideration of competition among proxy service providers? Would multiple competing service providers affect the quality of service?

A: This issue is addressed in Part I of this response.

Q: What are the practical and legal implications of deregulating fees in light of the existing contracts between proxy service providers and broker-dealers?

A: Given that the vast majority of proxy ballots are presumed to be distributed and collected at, or close to, the maximum fee that is allowable under SRO rules, it is not advisable to remove this restriction. Given the lack of penetration by competing proxy distribution firms, there is little reason to believe that there is substantial downward pressure on these fees.

Q: What are the potential merits and drawbacks of having a central data aggregator collect beneficial owner information from securities intermediaries?

A: A central point for dissemination and collection of proxy ballots *could* facilitate the development of electronic voting platforms for shareholders. These platforms may development more quickly because it's easier to build a single interface than "connect" to dozens of proxy distribution firms and transfer agents. However, it is critical that shareholders have full control over ballot delivery and that electronic platforms are recognized as valid delivery addresses.

Q: A number of investors have complained about the services of proxy service providers (and transfer agents performing similar functions). How are investors' interests addressed, if at all, in the selection of proxy service providers? Are the interests of investors in this process given adequate weight?

A: Our direct experience is that the interests of retail investors, in regard to proxy voting, are frequently ignored by retail brokers. More specifically, some brokers are refusing to honor instructions by their clients to change the ballot delivery to electronic platforms, like Moxy Vote. The brokers accommodate institutional investors in this regard and thereby disadvantage retail investors. Proxy distribution agents (i.e., Broadridge, Inveshare and Mediant) have expressed a willingness and ability to "plug in" to sites like Moxy Vote so the brokers appear to be the primary obstacle. Moxy Vote has yet to engage any transfer agents in discussions. Brokers should be required to select proxy distribution agents that have the ability to connect to platforms that are used by retail investors. Moreover, transfer agents should (eventually) be required to connect to these electronic platforms as well. Presently, the quality of the voting is lower for "registered" shareholders because these votes cannot be cast through electronic voting platforms that provide decision-support guidance to investors.

IV.A.3.

Q: Do our existing rules in appropriately inhibit issuers from effectively communicating with investors? If so, what changes should we make to our rules to improve investor communication? Even if our rules do not inappropriately inhibit issuers from effectively communicating with investors, do the rules significantly raise the cost of communicating? Do any non-Commission rules inappropriately inhibit issuers from effectively communicating with investors? What are the benefits and costs of the various changes proposed by commentators?

A: Our opinion is that the issuers do have the ability to satisfactorily reach shareholders with communications pertaining to annual meetings. It is possible that a company may face substantially high costs in the event that quorum is not met and the issuer needs to attempt to reach quorum by reaching out to OBOs. We believe, however, that electronic voting and communication platforms will prove to be the most effective method of reducing issuer costs so we encourage efforts to be focused in this area.

Q: Do investors consider the degree and manner of communication with issuers to be adequate?

A: Institutional investors are frequently solicited by issuers (i.e., their solicitation firm) in an effort to influence a vote or to simply obtain a vote. These communications are acceptable though sometimes characterized by an overly aggressive caller or calls which are too frequent. As an individual investor, we can attest to having, on occasion, received repeated phone calls, over a short period of time, to encourage voting. These communications are an unfortunate necessity that doesn't serve to improve the relationship between issuers and investors. Eventually, some form of two-way communication via electronic platforms will (hopefully) replace this system and should help to improve relations and governance.

Q: To what extent are proxy materials not being delivered in a timely fashion? Are any changes in our rules or other rules required to improve timeliness of delivery, either with respect to registered or beneficial owners?

A: Facilitating the development of electronic voting platforms, which will increase the overall percentage of ballots being delivered electronically, will reduce this error rate.

Q: What impact does the uniform appearance of proxy materials such as the VIF have on shareholder participation in proxy voting? Would investors, especially retail investors, be more likely to vote if there was less uniformity in the appearance of proxy materials?

A: With the absence of testing in this area, it is difficult to tell. In our opinion, the Commission should not focus its energies in this area because, if electronic voting accelerates, changes to paper delivery will rapidly become less and less influential each year.

Q: is the format and layout of proxy cards and VIFs clear and easy to use from the perspective of investors? Could the layout be improved to enhance investor participation? Do the formats of proxy cards and VIFs appropriately set out the consequences of not voting or giving voting instructions on one or more specific matters?

A: No, we have heard this from countless investors that we have interviewed. A more effective communication can be achieved on electronic platforms where investors are able to "point-and-click" to receive more information (e.g., definitions of key terms, answers to process-related questions, etc.) and access interactive tools (e.g., diagrams, videos, etc.).

Q: To what extent has the loss of broker discretionary votes in uncontested elections of directors increased the likelihood that issuers will not meet quorum requirements? Would the availability of less-costly means of communication with shareholders improve issuers' ability to meet quorum requirements?

A: Not long after that rule change had gone through, law firms were already advising issuers as to how to "pad" the agenda with some other "routine" matters to ensure that quorum would not be an issue. In our opinion, the brokers should not have discretionary voting on *any* agenda items. We recognize the challenge this will present to issuers but we believe that electronic voting platforms, combined with the introduction of some form of advance voting instructions, will more than overcome any challenges presented.

Q: Do investors have legitimate privacy interests with respect to the disclosure of their share ownership? In what ways would an investor be harmed if his or her identity and the size of his or her holdings are disclosed to issuers? Should an investor be able to indicate that he or she does not wish to be contacted *by an issuer? Are there technological solutions that would facilitate communication while protecting the identities of shareholders?*

A: On the surface, it seems appropriate that an issuer should be able to see the identity of its shareholders (especially for the purpose of communicating annual-meeting-related items). However, there must be rules related to this disclosure. Shareholders, for example, may not want this information shared with any outside firm or used for any other purpose including soliciting the shareholder for additional public equity investments in the same firm. In general, there should be some regulatory oversight in this area as it has the potential for substantial abuse. Other problems could arise between competing firms. For example, perhaps XYZ Broker would be interested in getting the names, for marketing purposes, of all of the largest stockholders at ABC Broker.

Q: Issuers have expressed interest in not only communicating with shareholders, but also in identifying them. While these interests can be complementary, is one more important than the other? Should any regulatory changes that may be considered by the commission emphasize one over the other?

A: My understanding is that issuers are already able to mail proxy materials out to all beneficial owners through the broker/broker's agent but they also (presumably) want to be able to call/e-mail OBOs to influence a vote in the event that they don't hit quorum or don't like the way the vote is going. We understand the business challenge here but can't support the abolition of the OBO designation without the changes called for in Part I of this letter. Otherwise, the shareholders will be inundated with issuer communication without ample opportunity to receive other opinions. Generally speaking, we would support open communication among all parties in the long run.

Q: Are there merits to, or concerns about, establishing a central beneficial owner data aggregator for use by issuers, as suggested by the Shareholder communications Coalition and as described above?

A: As a web-based platform designed to process electronic ballots, we have concerns as to how this suggestion will impact us and others like us that are small and retail-focused. We are interested in hearing further from the issuer community as to how ballots would be passed from the central data aggregator to the various electronic voting platforms that exist, including those developed specifically for retail investors.

Q: Is competition in the proxy distribution service market needed, and if so, what changes to facilitate issuers' communications with investors would also encourage competition in the proxy distribution service market?

A: Competition is present but not thriving. Please refer to Part I for our comments in this area.

Q: Should we consider rules that would shift the cost of distributing proxy materials to broker-dealers for customers who choose to be objecting beneficial owners?

A: No, this change will not have a beneficial impact on retail investors. Retail investors, will likely immediately switch to NOBO status upon hearing about the fee and will not fully understand the negative implications of the change (that is, in the absence of rules that guarantee the existence of retail-focused electronic voting platforms, they (i.e., the retail investor) will likely become disproportionately influenced by management).

Q: Do our rules adequately address how beneficial owners elect objecting or non-objecting beneficial owner status when they open their accounts? Should there be a requirement that beneficial owners' account agreements adopt any specific election as the default choice? If so, would it matter whether the Commission, FINRA, or the stock exchanges imposed that requirement? Should the required default choice be for objecting or non-objecting beneficial owner status? Are there other ways in which default positions can be established for customers of securities intermediaries? Should there be a standardized form for customers to elect either NOBO or OBO status?

A: Our opinion is that, in the long-run, all investors should be NOBO investors by default (i.e., open communication is productive for good governance). But, this change cannot be made without corresponding changes that ensure that retail-focused proxy voting platforms can survive and thrive. Moreover, as discussed, protections are needed to prevent abuse of this information.

Q: Should we or SROs instead, or in addition, consider requiring securities intermediaries to provide informational materials to their customers prior to allowing the customer to elect OBO or NOB status? What should be included in such informational materials, and how frequently should investors be provided with such materials? Should we consider requiring securities intermediaries to inform customers of the reasons for and against choosing to disclose or shield their identities?

A: This is not practical based on the on-line application process of many brokerage firms. The reality of today's retail investors is that they are already inundated with point-of-sale disclosures and adding to that mix will only further cloud the message. There is an opportunity for institutional accounts given the more manual process for setting up accounts.

Q: What are the costs and benefits of the annual NOBO system suggested by commentators? Would disclosure of all beneficial owners, limited to information as of the record date of a shareholder meeting, harm those investors (for example, would it reveal trading strategies of those investors)? Would implementing the annual NOBO system adversely affect any privacy interests of OBOs? As a practical matter, would issuers be able to contact OBOs using this information for subsequent shareholder meetings?

A: A senior officer of a leading proxy solicitation firm indicated to us that U.S.-based issuers likely spend hundreds of millions of dollars annually on proxy solicitation (i.e., efforts to reach quorum or influence a vote). These costs would be lowered with a system where all beneficial shareholders were NOBO and further helped with the spread of electronic voting platforms that allow advanced vote instructions.

Q: What problems might arise if issuers or their transfer agents have greater access to or control of shareholder lists? How could we provide for fair and efficient access to those lists by other soliciting parties?

A: We have, on a few occasions, assisted a third-party with a shareholder mailing. The process is somewhat cumbersome and expensive. There are service providers, like Broadridge, that will facilitate these types of mailings and access to these providers are a great convenience to shareholders. However, when implementing through a third-party there appear to be operational limitations related to how granular one can segment the shareholder list for mailing purposes. These limitations make targeting more challenging for non-issuer solicitors with limited budgets. Generally speaking, there is a lack of information regarding exactly how to effect such a mailing. Any rules that the Commission may adopt should include fair and equal access to shareholder information by all parties seeking to influence a vote.

IV.B.3.

Q: To what extent should we take additional steps to encourage retail investor participation in the proxy process?

A: Please refer to Part I which covers this extensively.

Q: To what extent would greater use of plain English, some form of summary of proxy materials, or layered formats in Web-based disclosure make proxy materials more accessible to retail investors?

A: We encourage the Commission to focus energies on web-based solutions that generally involve more materials being available in electronic format and more data-tagging of electronic documents.

Q: To what extent are retail voter participation levels affected by process-related impediments to participation? If affected by impediments, what are they and should we seek to remove them? What costs and benefits are associated with efforts to increase participation?

A: Please refer to Part I for the first two questions. Regarding the third, the benefit of increasing retail voter participation (along with vote quality) is a system of improved corporate governance. Improved corporate governance has a direct positive effect (i.e., academics have shown that better governance leads to better stock performance) and, as a matter of policy, there is an indirect effect (i.e., a loss of confidence in the overall system may eventually lead to a drain of investment capital from the US equity markets thereby having adverse impacts on the US economy). Our belief is that the solution to the lack of retail voter participation is electronic voting platforms for retail investors. A great benefit of this solution is that it's actually a "win-win" (i.e., it improves governance while likely reducing costs for issuers given that electronic ballot delivery costs are far cheaper than paper).

Q: Would additional investor education improve retail investor participation in the proxy process? How could such a program best reach both registered owners and beneficial owners? What would be the benefits and costs of such a program? What should be in the educational materials and who should decide what goes in them?

A: Yes, investors need to continue to be educated. But, this will eventually begin to accelerate via the internet as driven by retail-focused voting platforms. The Commission can expect that, if it creates a business environment that is conducive to retail-focused electronic voting platforms, these platforms will spend aggressively to engage shareholders. In that process, these platforms will need to inform investors about the process and sell them on the benefits of participation.

Q: Should brokers more clearly highlight and disclose key policies, including a shareholder's voting rights and default positions, such as OBO/NOBO, when a customer enters into a brokerage agreement? Should brokers provide counseling to potential customers to enhance understanding of such provisions in the brokerage agreement? When a customer enters into a brokerage agreement, should brokers be required to obtain the preferences of the client regarding whether to receive proxy materials electronically, and inform issuers of that election automatically when securities of that issuer are purchased?

A: As mentioned before, it won't likely benefit the retail investor to see more point-of-sale disclosure nor is it practical to interrupt a process (i.e. account set-up) that is nearly entirely electronic at many broker-dealers. As a practical matter, many brokers now default to e-mail delivery of proxy materials which must be overridden if paper is desired. We would encourage brokers to disclose the option of using a service like moxyvote.com or, at least, making a reference to the fact that VIFs may be received electronically at a third-party web site. This latter disclosure may alternatively include a reference the SEC site that could contain a reference to other resources.

Q: What role should the Commission play in promoting or developing the education campaign? How can the SEC's investor education Web sites be made more useful? For example, should the Web site provide interactive instruction?

A: We think broker disclosures should make reference to the SEC's site. We also think the SEC site should include a detailed description of the various delivery methods (i.e., paper, e-mail, electronic voting platform) with a description of the key considerations in selecting each (e.g., if you don't have a computer - pick paper or, if you would like to build pre-defined voting policies – pick electronic). References to all available electronic voting platforms (e.g., RiskMetrics, Glass Lewis, Moxy Vote, etc.) would also be helpful.

Q: Would an issuer's Web site or a broker's Web site be a useful location for investor educational information? Are there other methods to effectively educate investors? What would be the costs and benefits of requiring issuers or securities intermediaries to include such information on their Web sites?

A: Yes, broker and issuer sites should include descriptions about the various methods by which an investor can receive materials. Links to existing electronic voting platforms may also facilitate the migration of shareholders to electronic delivery.

Q: Should issuers or brokers enhance their Web sites, if they have one, to provide the issuer' shareholders or the brokers' customers, respectively, with the ability to receive notices of upcoming corporate votes, to access proxy materials and to vote shares through their personal account pages? What would be the *costs of such a system? Would adding this service for investors make them more likely to vote? To what extent do issuers and brokers currently provide such functionality on their Web sites?*

A: My understanding is that many of these tools currently exist (e.g., we know that certain proxy distribution firms, for example, have the ability to deliver many client-specific materials directly back to a broker's own web site). These tools likely won't take root, however, unless brokers are required to use them. We don't advise mandating the use of these tools as we think third-party services, like Moxy Vote, are filling the void. The key for the Commission will be to create a nurturing environment (per the recommendations of Part I) in order for sites like Moxy Vote to thrive. Issuer websites are not likely a good place for these tools. Shareholders are far more likely to visit a broker site than the site for a given issuer. Moreover, it's impractical to make a separate visit to each issuer web site to cast a vote when technology enables a far more efficient solution.

Q: Should we encourage the creation of inexpensive or free proxy voting platforms that would provide retail investors with access to proxy research, vote recommendations, and vote execution? If so, how?

A: Yes, please refer to Part I.

Q: Should we consider allowing securities intermediaries to solicit voting instructions in advance of distribution of proxy materials pursuant to an exemption from the proxy solicitation rules? Should there be any conditions on any such exemption, and if so, what should they be?

A: Yes, we think the gathering of advance voting instructions is the correct long-term direction for the industry and is, all factors considered, beneficial for retail shareholders. But, in our opinion, there is a "right" and "wrong" way to achieve this long-term goal. If brokers are permitted to simply take some basic instruction at the point-of-sale without ever receiving some form of affirmative action by the shareholder it could be devastating to retail investors. It is our contention that such a system will prove to amount to nothing more than a "rubber-stamp" for issuers (i.e., a replacement of the broker-vote). It is this issue that makes it so vitally important that the retail shareholder have full control over the delivery location of ballots along with the option to deliver to an external electronic voting platform (e.g., moxyvote.com). Without that threat, brokers will have little incentive to improve the system that they create. They will look for the easiest solution that satisfies their compliance obligations. On the other hand, if they face the threat of having the ballot leave their platform, they will (eventually) look to build in the technology of the external platform into their own which will prove to be a much superior product for the shareholder.

Q: To what extent would voting instructions made without the benefit of proxy materials result in less informed voting decisions? Are there countervailing benefits to permitting the solicitation of such instructions? To what extent does the revocability of advance voting instructions mitigate concerns over less informed voting decisions?

A: It is our experience that investors (retail and many institutional) generally don't read the proxy materials. Institutional investors have the luxury of hiring a proxy advisory firm that will sort through the materials and provide a vote recommendation that is supported by analyst research. Retail investors, in part because of the complexity of these documents, simply do not vote in great numbers. The reality is that the average retail investor is not likely going to read the proxy materials. So, it is our contention that allowing them to create a standing voting policy – provided there is adequate disclosure of voting policy options - will have no adverse consequence on the quality of the vote. On the flip side, it could have a substantial positive impact. For one, it may increase participation. And, sites like Moxy Vote will develop that will allow shareholders to build standing instructions that are driven by a wide array of third-party data sources. This will enhance the quality of the vote because retail voters will align with guidance from sources that they know and trust. In addition, retail investors who use a web-based system for information will always have access to the proxy in electronic format for further information. We believe the revocability of instructions (i.e., the ability to change the policy and override the vote manually) is of paramount importance in this instance. Assuming these obligations are met, we believe this activity should be allowed.

Q: With regard to the use of advance voting instructions, are retail investors at a disadvantage as compared to institutional investors that use the services of a proxy advisory firm? If so, how? Are there aspects of the services and relationship between proxy advisory firms and their clients that would not exist between securities intermediaries soliciting advance voting instructions and their customers? If so, how should these differences be addressed, if at all?

A: Yes, please refer to Part I. Our direct experience indicates that many brokers are presently unable or unwilling to effect the delivery of ballots to an electronic platform for retail clients. It is our understanding that all can accommodate this delivery for institutional clients. Given that these platforms effectively connect the voters with data that is relevant to making a good voting decision, retail investors are suffering. Refer to Part I for additional details.

Q: If solicitation of advance voting instructions were permitted, what level of specificity should the solicitation of advanced voting instructions be required (or permitted) to have? Is it appropriate to permit the solicitation of a broad scope of voting authority?

A: Provided that the Commission requires brokers to deliver to external electronic voting platforms, no rules are needed in this regard. This requirement will ensure that sufficient competition will be present to enhance product offerings such that a minimum quality standard need not be created.

Q: Should we allow the solicitation by securities intermediaries of advance voting instructions for all types of proxy proposals, or should it be limited to certain types of proposals? For example, should we permit solicitation of advance voting instructions with respect to shareholder proposals, proxy contests, or proposals subject to "vote no" campaigns?

A: Yes, all types should be allowed. Creating limitations greatly complicates the implementation and will deter growth.

Q: If solicitation of advance voting instructions were permitted, should the investor be permitted to instruct the securities intermediary to vote in accordance with the recommendations of management, a *proxy advisory firm, or other specified persons? How neutral or balanced should the solicitation of advance voting instructions be?*

A: Provided that the Commission requires brokers to deliver to external electronic voting platforms, no rules are needed in this regard. This requirement will ensure that sufficient competition will be present to enhance product offerings such that a minimum quality standard need not be created.

Q: If we were to allow the solicitation of advance voting instructions, should we require an investor to reaffirm its voting instructions periodically? If so, how often? Should we require an investor to reaffirm its voting instructions every time it purchases additional shares of a stock for which that investor has already submitted a voting instruction, or when it purchases shares of a new issuer?

A: We would recommend that no set schedule be established provided the platform is sending periodic communication (e.g., ballot arrivals, vote confirmations, etc.) and there is no evidence of a communication break-down (e.g., repeated e-mail "bounce backs"). Further thought should be given in regard to a best-practice as to how to handle repeated communication failures.

Q: If we were to allow advance voting instructions, what would be an appropriate range of options available to an investor? Should advance voting instructions only be permitted when the investor has meaningful options from which to choose?

A: Provided that the Commission requires brokers to deliver to external electronic voting platforms, no rules are needed in this regard. This requirement will ensure that sufficient competition will be present to enhance product offerings such that a minimum quality standard need not be created.

Q: How difficult would it be to obtain advance voting instructions from existing brokerage customers? What would be the costs of obtaining advance voting instructions for existing accounts? Who should bear the costs of soliciting such instructions?

A: This process will likely be expensive but there are firms, like Moxy Vote, that are eager to direct capital toward this challenge provided the Commission makes the environment conducive to change. Other firms are sure to follow.

Q: If we were to allow the solicitation of advance voting instructions, would it undermine or promote the purpose of the recent amendment to NYSE Rule 452 to prohibit brokers from voting uninstructed shares in uncontested elections of directors?

A: Provided steps are taken to ensure that we don't have a "rubber stamp" issue as described above, we will be moving closer to an optimal environment (i.e., a governance process without a broker vote and, in which, retail voters are actively engaged). We believe the key lies in the shareholders ability to control ballot delivery.

Q: To what extent are investor interest in matters presented to shareholders and investor voting participation affected by the lack of investor-to-investor communications regarding those matters?

A: See Part I. The retail investors' lack of empowerment could be helped by connecting with other like-minded investors that allow them to form more relevant voting "blocs." The power of the internet in connecting people is well documented.

Q: Have electronic shareholder forums been used extensively? Are there any revisions to Rule 14 a-2(b)(6), which currently provides an exemption for electronic shareholder forums, that would make it easier to establish such forums? For example, is there a way for an entity establishing an electronic shareholder forum to confirm the shareholder status of participants on the forum? If a securities intermediary provides information, such as a control number, to enable such confirmation, should precautions be taken to ensure that personal information about those investors is not disclosed?

A: There are tools that allow a service provider, if given certain brokerage account information, to access a given investor's brokerage holdings for the purpose of share verification. These tools may or may not be necessary to increase participation in shareholder forums and various electronic voting platforms. As a practical matter, retail investors have been "chatting" on sites like Yahoo/Finance for years and most likely are unaware of the existence of 14a-2(b)(6). The rule is likely only affecting the behavior of issuers, institutional investors and various "advocate" organizations that are unsure about their ability to participate and whether or not they are exempt from the rule.

Q: Should we consider revising the electronic shareholder forum rules to shorten the 60-day period to promote more shareholder-to-shareholder communication closer to the meeting date? If so, what would be an appropriate time period?

A: Yes, we would be in favor eliminating the restriction and allowing all parties to openly communicate on these forums provided shareholders control ballot delivery.

Q: Would any additional guidance regarding the scope of our rules and definitions, such as the definition of the term "solicitation," improve the extent and quality of investor participation in the proxy voting process?

A: Please refer to Part I. We think it's critical to expand the definition of disinterested parties to ensure that those non-issuer groups, whose opinions may be published on retail-based electronic voting platforms, are exempt from the solicitation rules. Generally, Moxy Vote is also supportive of the issuers' participation on these platforms as well.

Q: Should 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?

A: We would encourage the Commission to focus efforts on creating electronic voting platforms. As a practical matter, issuers are likely to use the cheaper notice and access model for small retail investors which may (arguably) lower vote activity in that group. But, as long as the retail investor has the *chance* to use the services of an electronic voting platform (and thereby has a shot at re-establishing their relevance by aligning with other small investors), we do not have a problem with issuers choosing the less costly method of delivery.

IV.C.3.

Q: Would it be useful to investors for issuers to provide their proxy statement and voting information, or some subset of that information, in interactive data format? If so, would it be useful for issuers to provide the information both to the Commission and on their corporate Web sites, if any? Would data-tagging enable investors to access proxy information more easily or to compare information regarding different issuers and/or change sin information over time with respect to a specific issuer or a set of issuers? Would this ability result in better informed voting decisions? For instance, should officer and director identities be tagged and linked to their unique Commission Central Index Key (CIK) identifier, which would enable investors to more easily determine whether they have relationships with other Commission filers? Would investors benefit if governance attributes, such as board leadership structure and director independence, were tagged?

A: Generally speaking, creating documents in electronic formats and data-tagging content will assist in the development of electronic voting platforms. We are very much in favor of these efforts. We also encourage the Commission to make basic documents (e.g., the proxy solicitation filing and 10-K more easily accessible from the SEC site. These documents should be included as hot-links on any electronic ballot that is presented to a shareholder on a platform like Moxy Vote and, based on our own experience, the process for accessing this information electronically is not currently fail-proof.

Q: Should persons other than the issuer be required to file proxy materials in interactive data format?

A: No, many shareholders that reach out to other shareholders simply do not have the resources to implement this change and it will prove an impediment to small investor engagement.

Q: How will retail investors have access to interactive data/XBRL software that will enable them to take advantage of interactive data formats?

A: Retail-focused electronic voting platforms will make this data available. Moreover, some platforms will build useful tools to extract, analyze and present this data for decision-support purposes.

V.A.4.

Q: Do proxy advisory firms perform services for their clients in addition to or different from those noted above?

A: We would encourage the Commission to recognize a new set of “proxy advisory firms” like Moxy Vote. Moxy Vote is similar to institutional proxy advisory firms (e.g., RiskMetrics) in that it provides an electronic address for the purposes of receiving electronic proxy ballots and facilitates voting. However, it is different because it has no discretionary control over the vote. Current institutional providers typically have a team of analysts (i.e., internal employees) that drive the vote recommendation. Moxy Vote does not employ a team of analysts. Rather, the Moxy Vote decision-support system is "crowd-sourced" by an unlimited number of unaffiliated third-parties that provide vote guidance and are subject to SEC regulations with respect to false or misleading statements and may have to file any solicitations themselves (including exempt solicitations if required under Rule 14a-6(g)). As such, a different set of rules should apply to mere "vote facilitator" (like Moxy Vote) versus firms that are actually providing vote advice with, in effect, discretionary control.

Q: Is additional regulation of proxy advisory firms necessary or appropriate for the protection of investors? Why or why not? If so, what are the implications of regulation through the Advisers Act or the proxy solicitation rules under the Exchange Act? Are any other regulatory approaches equally or better suited to provide appropriate additional regulation?

A: Yes, some regulation is needed. These platforms are responsible for carrying vote instructions from shareholders to brokers (or their agent). This step is vital to the integrity of the process and there needs to be some oversight to ensure that these firms are processing votes without substantial error. Moreover, they should be subject to certain technological standards (e.g., a robust disaster recovery and data security plan) given the sensitivity of deadlines in this arena and repercussions of missing them.

Q: If additional oversight is needed, should it be in the form of regulatory oversight or issuer involvement?

A: Independent regulatory oversight is needed to gain investor confidence in the integrity of the overall process.

Q: Do proxy advisory firms control or significantly influence shareholder voting without appropriate oversight?

A: In our opinion, yes. Competition will likely naturally improve as more and more ballots are being delivered electronically. This evolution will lower the barriers to entry that have led to the current dominance by a few key players. Nevertheless, regardless of the market share among industry participants, firms processing ballots should be examined periodically.

Q: Do proxy advisory firms maintain an audit trail for votes cast on behalf of clients? Do proxy advisory firms monitor whether votes cast are appropriately counted, and if so, how?

A: Moxy Vote does maintain a complete audit trail for votes cast. Unfortunately, Moxy Vote has no ability to see what occurs after the vote is passed to the proxy distribution agent. We would encourage changes in the area so that Moxy Vote can definitively confirm for its clients, the beneficial shareholders, that a vote has been recorded by the issuer.