SIFMA
Securities Industry and Financial Markets Association

Elizabeth Murphy, Secretary
U.S. Securities and Exchange Commission
One Station Place
100 F Street, N.E.
Washington, D.C. 20549-9303

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

Dear Ms. Murphy:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to provide comments on the above-referenced release, which poses questions about the operation of the system for proxy voting and shareholder communications in the United States. As you are aware, in anticipation of the Concept Release, SIFMA published its Report on the Shareholder Communications Process with Street Name Holders, and the NOBO-OBO Mechanism (the "Report" or "SIFMA Report"), a copy of which is available in the comment file. We incorporate that Report into this letter, which focuses principally on specific questions that the Report did directly address.

Our comments follow below.

Alternatives to the current system for proxy voting and shareholder communications lack sufficient detail to fully evaluate, have multiple conflicting purposes, and would not be investor friendly

As we pointed out in our Report, in considering alternatives to the current system we urge the Commission to benchmark the well-documented efficiency, reliability, credibility, and data security of the existing system. The Commission should also take into account the important role played by brokers in the proxy process. Brokers provide clients with guidance and assistance on numerous account-related matters. As a consolidated and uniform source of support for proxy voting and shareholder communications across portfolios of securities, brokers provide their clients with a holistic, user-friendly experience that would be undermined by several of the alternatives noted in the Concept Release.[2]

[1] The Securities Industry and Financial Markets Association brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington, D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

[2] See SIFMA Report, at 11-12.

The Commission should also take into account that issuers already have direct contact information for most of their retail shareholders, who are registered holders or NOBOs. Under the current system, issuers can communicate efficiently and effectively not only with these shareholders, but also with their OBOs, although communications with OBOs must be made through a broker's agent.[3] According to Broadridge Financial Solutions, Inc. ("Broadridge"), which maintains the NOBO-OBO database, only about 13% of shares outstanding held by OBOs are held in retail accounts. The remaining 87% are held in institutional accounts. Most issuers are well aware of the identities of their major institutional shareholders, including through filings on Form 13F, 13D, and 13G.

As we discussed in detail in our Report, we would not oppose alternatives to the current proxy voting system so long as such alternatives preserve the efficiency, reliability and credibility of the current system. While various concepts have been floated as alternatives, no concept has been mapped out in sufficient detail to understand how it would operate, or to compare it to the existing system.

We believe that any alternative system, furthermore, must be shown to serve the interests of investors. None to date appears designed to serve investor interests. In particular, the Concept Release describes a variety of proposals that would permit multiple additional agents to obtain beneficial owner information for the purpose of undertaking distribution assignments on behalf of issuers. However, as described in our Report, such an approach would force investors to interact with a different distribution agent for each position in his or her portfolio. Each such agent might have a different platform for electronic voting, and some "low cost" agents may not offer electronic voting at all. Some agents may offer customer service for investor inquiries and voting problems, and some may not offer customer service at all. In all events, a single investor may have no choice but to identify and contact different agents depending on the securities position in question, and to communicate with those agents through different channels and formats.

As detailed in our Report,[4] a representative advisory committee commissioned by the SEC previously considered permitting issuers to appoint their own distribution agents, but declined to recommend it fearing that it "could have proved unwieldy, unworkable, and unpopular." While some proponents of alternatives have pointed out that technology has advanced since the last consideration of an issuer-directed approached, they do not identify which particular new technologies might make an issuer-directed system more workable. We are unaware of any such technologies that would change the conclusions reached by the earlier advisory committee. We also described in the Report how issuer control of the proxy machinery would result in real or apparent conflicts of interest that could undermine the credibility of the system.

Proposed alternatives, furthermore, have multiple and sometimes conflicting objectives. Some seek to simplify proxy voting, but instead would appear to further complicate voting. As described above, the proposal to restructure the system to permit each issuer to choose its own distribution agent would further complicate proxy voting, especially from an investor's perspective. Another purported objective is to enhance market competition, but the proposal to establish a single data aggregator would extinguish any prospect of competition over the part of

[3] See SIFMA Report, at 15-17.

[4] See SIFMA Report, at 17-19.

proxy distribution that is the most capital intensive and dependent upon continuing investment in emerging technologies. The central data aggregator might be a non-profit entity, but non-profits also charge market prices for their products, and – absent additional detail – there is no reason to believe that it would be more efficient or less costly to issuers and other parties compared to private distribution agents.

Perhaps the most prominent stated objective of various proposals is the enhancement of issuer-shareholder communications. As we stated in our Report, we support measures that are designed to aid issuers who wish to communicate with their shareholders, given that such communications are to the benefit of our clients. However, it is unclear how and whether proposed alternatives would accomplish this goal. Some proposals would appear to accomplish the goal indirectly based on a variety of intervening assumptions. The core assumption appears to be that the costs involved in shareholder communications under the current system inhibit issuers from communicating with a wider spectrum of shareholders. As noted above, however, it is far from clear that a different approach would result in lower costs for issuers. Nor is it clear to what extent issuers would decide to communicate with smaller holders even at a lower cost, or that a given issuer's shareholders – particularly those who have evidenced a desire not to be contacted by affirmatively electing OBO status – would be receptive to such communications.

We believe that issuer-shareholder communications would be more successfully facilitated through means that *directly* seek to achieve the goal, such as through investor education, leveraging new technologies (e.g., electronic shareholder forums), and systems to facilitate shareholder voting (e.g., "client directed voting.").

The privacy right of retail investors in their personal records should be a priority in setting policy

As detailed in our Report,[5] we believe that investors' interest in the privacy of their personal financial records has only intensified since the original adoption of the NOBO-OBO mechanism. Since the 1980's, individual interest in privacy protection and data security has grown, particularly in connection with personal financial records.

We believe that our clients who have elected OBO status will be uncomfortable with a regime that compelled brokers to disclose their personal account information against their wishes, or that burdened their right to elect OBO status. We cited in our Report data suggesting that OBOs have made deliberate decisions to shield their identities and contact information.[6] The data shows that OBOs hold share positions that are significantly larger than those held by NOBOs, making them more likely to be aggressively contacted by proxy solicitors or other agents. Our members periodically receive complaints from clients who have been contacted by proxy solicitors. One member recently related a complaint that clients were called repeatedly – 5 times within a short period – by the same proxy solicitor. Forcing investors to become vulnerable to these types of contacts – and against their wishes – is not only unproductive, but simply not in the interest of investors.

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[5] See SIFMA Report, at 19-21.

[6] Id. at 20.

In a directly related context, the Commission has already agreed in substance with this view. In adopting its own Regulation S-P, implementing legislation designed to protect the privacy of personal information an investor has entrusted to his or her broker, the SEC recognized an investor's identity, contact information, and share position data to be within the protections of that Regulation.[7]

As detailed in our Report,[8] a 2006 NYSE survey shows that the current mechanism for identifying NOBOs and OBOs overstates the number of investors who would choose NOBO status if asked again by about 9%. The NYSE study found that 64% of retail investors, if asked again as of the date of the study, would elect NOBO status. By contrast, a larger percentage of retail accounts – 73% – are actually classified as NOBOs.[9] One major firm surveyed nearly 2,000 recent new account openings, and found that 36% of clients opted for OBO status, and 64% chose, or defaulted to, NOBO status. The account-opening documents for this firm automatically default clients to NOBO status unless they check a box indicating that they prefer OBO status.

In the Concept Release, the Commission questions how much individuals who have chosen OBO status truly care about the privacy of their personal account information. In this connection, the Commission cites the same NYSE survey noted above. As a follow-up question to those individuals who indicted a preference for OBO status, the survey asks whether the investor would be willing to pay a small annual fee, such as $25, to maintain that status. Several responded that they would not pay the fee. We question, however, whether the survey results on this point are meaningful. It is unclear that asking respondents whether they would pay a monetary penalty would ever render accurate results, since an instantaneous response to a question of this nature may well not predict the individual's actual conduct later.[10] It is also unclear whether these respondents were fully informed that NOBO status might entail telephone calls at home from proxy solicitors. Indeed, we believe that many of the respondents who initially selected NOBO status in the survey would change their answers and prefer to be OBOs if they were informed that they might be contacted at home in connection with proxy solicitations.

Some have proposed other approaches to compel disclosure of the records of beneficial holders. One suggestion noted in the Concept Release is to compel such disclosure, but only once each year at the time of a company's annual meeting. We do not support this approach, since an investor's privacy is equally compromised by a single disclosure, as by multiple disclosures, particularly in this environment of instant electronic communications and efficient database storage vehicles. Under this approach, while the availability of the information would be

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[7] Final Rule: Privacy of Consumer Financial Information (Regulation S-P), Exchange Act Rel. No. 42974 (June 22, 2000) ("Regulation S-P Adopting Release"), at 19-20.

[8] Id.

[9] We believe that the marginal overstatement of NOBOs is an inevitable result of the requirement that brokers default investors to NOBO status absent instructions to the contrary.

[10] This is particularly the case because the payment of a fixed monetary penalty is unrelated to the substance of the question that was asked. A more accurate way of obtaining the information sought would have been to ask the question directly–how strongly the respondent feels about his or her privacy right.

restricted, the proxy solicitor's use of that information would be unlimited. An investor undoubtedly cares more about the latter than the former. That is because a proxy solicitor could use the information obtained on a continuous basis throughout the year, and place unlimited number of telephone calls to a single investor–including prerecorded telemarketing style calls–or target hundreds of thousands of investors with repeated spam-style emails.

From the point of view of the investor interested in preserving his or her privacy, it would make little difference as a practical matter whether his or her personal information was released once, twice, or multiple times each year. Indeed, if the information became generally available on the Internet, it would be continuously available and its use could not as a practical matter be regulated. We are concerned that information could be made publicly available deliberately or through inadvertence. It is unclear that the SEC would have sufficient regulatory authority over the variety of solicitors and other distribution agents to ensure that they maintain adequate security protocols over the information.

Nor do we believe that it would make much difference from an investor's viewpoint if the Commission also restricted the time-period in which the issuer and its proxy solicitor could use the investors' contact information. If the Commission restricted the time-period, for example, to the quarter in which the shareholders meeting were to take place, investors would still be exposed to weeks of numerous unwanted phone calls and/or emails. We question, furthermore, that the SEC or any other agency would be in a position to police unauthorized investor contacts that are made outside those timeframes, or for unauthorized purposes.

Disclosure of client information could also lead to concerns about personal security. Many investors who have chosen OBO status may have made consistent elections with their telephone companies to have unlisted telephone numbers. Many individuals elect to remain "unlisted" for compelling personal security reasons, as well as for privacy reasons. As noted above, the routine disclosure of an investor's name and contact information to an unlimited and varied group of third parties could well result in disclosure on the Internet or other public forum, whether due to deliberate disclosures, lack of adequate security protocols, or other inadvertence. We note that there are Internet websites that specialize in selling or otherwise providing personal contact details.

Looking at the issue from a different vantage point, and from the standpoint of setting priorities for policy and allocation of resources, we do not believe that focusing on the relatively small pool of retail OBOs is warranted. According to Broadridge, which maintains the NOBO database, only about 13% of shares outstanding held by OBOs are on the retail side.[11] The balance, or 87% of OBO shares outstanding, are held by institutional investors, primarily through bank custodians. By comparison, on the institutional side, 71% of accounts holding 91% of institutionally-held shares are classified as OBOs.

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[11] This percentage includes registered shareholders who hold their shares directly on the books of the issuer and its transfer agent. According to Broadridge, excluding registered holders, about 16% of all OBO shares outstanding are held by retail shareholders. In formulating this data, Broadridge defines "institutions" to include users of institutional voting platforms, including ProxyEdge, as well as vote agents and managed accounts. The remaining holders are assumed to be individual retail shareholders.

We believe, furthermore, that an SEC rule requiring disclosure of OBOs or otherwise erecting obstacles to their decision to opt-out of public disclosure would be inconsistent with Subtitle A of Title V of the Gramm-Leach-Bliley Act. Subtitle A requires financial institutions to protect certain nonpublic personal and financial information provided by their clients. As noted above, the Commission has interpreted the statute to protect a client's personal contact details along with information on share positions. See Regulation S-P Rule 3(t). The SEC and other government agencies are granted authority to set standards consistent with the purpose of the statute, but not to make exceptions that contradict the statute's core operative provisions to serve other competing purposes.[12]

The Concept Release asks how costs associated with street name ownership or OBO status should be allocated among issuers, brokers, or investors who wish to maintain their privacy. It is unclear that there are costs directly associated with street name ownership as compared to other forms of ownership, or that any such marginal costs – if they exist – have been quantified or are quantifiable. In particular, this view appears to assume that registered ownership today is less expensive on a per-account basis than "street name ownership," but we are unaware of any data to support that assertion.

Indeed, proposals to impose fees to maintain OBO status appear to seek arbitrarily fixed payments that are more in the nature of a fine or tax designed to penalize individual investors for invoking their right to privacy, rather than a quantifiable cost reimbursement. If this is the goal, it is unclear on what basis the fee might be imposed, and who would receive the payment. In all events, we doubt that imposition of a fee would discourage institutions such as hedge funds from maintaining OBO status in order to keep their trading positions from public view. The impact consequently would fall disproportionally on individual investors, who lack the monetary and other resources of institutions. We would not support the imposition of any fee, or imposition of any other obstacle, that would by design or in practical effect disproportionately burden individual investors.

The Concept Release asks whether brokers have a commercial interest in their client lists. The disclosure of a broker's client list could unquestionably result in serious commercial harm because it could provide competitors with useful information in marketing to that broker's clients. Brokers furthermore have a recognized property interest in such lists,[13] and the

[12] In particular, Section 6804(b) of the GLBA states that implementing agencies may make such exceptions "as are deemed consistent with the purposes of this subchapter," and "comparable" to the regulations adopted by other implementing agencies. The purpose of the subchapter is to protect an individual investor's right to privacy in records entrusted to his or her financial advisor. A rule that compelled such disclosure to nonaffiliated issuers and their agents, or burdened an investor's ability to opt-out of such disclosure – with the objective of furthering a competing policy goal under the federal proxy rules – would appear inconsistent with the letter and purposes of the subchapter. Such an exception, furthermore, would not be comparable to rules adopted by other agencies.

[13] See e.g., McLaughlin, Piven, Vogel, Inc. v. W.J. Nolan & Company, 498 N.Y.S.2d 146, 152 (N.Y 1986) (firms client lists are protected as trade secrets).

Commission has viewed information on a client's broker affiliations to be protected under Regulation S-P.[14]

We accordingly urge the Commission to preserve investors' interest in their personal account information as it considers rule proposals on this subject matter.

We believe that prescribing brokers' conversations with new clients on the selection of NOBO or OBO status would be unnecessary to ensure that investors make informed decisions, but we would not oppose this approach so long as the written instructions are balanced, and brokers are free to offer advice on the subject based on the client's characteristics.

The Concept Release asks whether brokers' conversations with new clients should follow a standard format or script in connection with a new client's election between OBO and NOBO status. As noted above, we do not believe this type of requirement is necessary given evidence that the rules, as currently administered, reliably classify investors as NOBOs and OBOs. As a result, there frequently is no significant discussion focusing on the subject. We note that some brokers communicate with some or all of their clients electronically rather than orally, depending on the degree to which they provide on-line account opening options, so that there would be no opportunity to read a script. At the time of account opening, furthermore, the NOBO-OBO distinction is not always a top priority for new clients as compared to other issues that they are called upon to consider.

We do believe that there is a need to ensure that clients are informed on this subject, and we support an initiative by brokers to include investor education materials on their websites to help clients to better understand the NOBO/OBO classifications. Firms should also consider including explanatory materials as part of the account opening documentation.

If the Commission concludes that prescribing broker conversations on this subject is necessary or helpful, we believe the approach would be acceptable so long as the guidance is fair and balanced as between the two options, and so long as it need only be used if the issue comes up in the course of the account opening process. We believe that clear written instructions used to guide such conversations would be more effective – and credible from a client's perspective – than scripts.

Under all circumstances, however, brokers should remain free to respond to a client's request for advice on the NOBO-OBO question. We believe that discussion on the subject initiated by the broker will inevitably lead to follow-up questions, including requests for general advice from the broker. It is part of the broker's role to provide such advice, based on the characteristics of the client. For example, a client who holds large share positions is more likely to be contacted by an issuer's proxy solicitor. If the broker is aware that the client does not wish to be contacted by solicitors, the broker should be free to make sure that the client understands this aspect of NOBO status. If the client holds small share positions or would appreciate being contacted by issuers and their agents, then the broker likely would advise NOBO status.[15]

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[14] See Regulation S-P Adopting Release, at 19-20.

[15] Despite statistics showing that the overwhelming majority of retail investors are NOBOs, some have suggested that brokers today actively discourage their clients from choosing NOBO status.

Firms that communicate with their clients through means other than oral discussions at the account opening stage should not be required to hold a prescribed oral conversation with new clients. Such firms should instead be permitted to include explanatory information in account opening documents, or notify new clients at account opening of explanatory disclosure on the firm's website.

Our Report included a recommendation that brokers refresh the status of their clients as OBOs and NOBOs, while also ensuring that clients are informed about the implications of each classification. We do not believe that brokers should be required to refresh client's elections to be NOBOs or OBOs on any fixed schedule It is our experience that clients generally do not change their preferences over time, aside from some clients who change their status to OBOs after having been contacted by a proxy solicitor. Accordingly, the time and expense associated with periodic efforts on this subject would be unjustified.

We support an initiative by brokers to improve investor education on shareholder communications and proxy voting, and note that some broker websites already facilitate proxy voting.

The Concept Release asks whether brokers should actively support investor education on proxy voting. We believe brokers should enhance their investor education efforts in part by including relevant content on their websites. We believe that brokers, issuers, and regulators should participate in improving investor education. As described in our Report, brokers already provide investor education by responding to the thousands of client questions they receive each year on proxy voting.

In particular, we believe that broker websites should provide investor education materials to help clients better understand the proxy voting and shareholder communications process, particularly the nature and implications of the NOBO-OBO distinction, and explanatory disclosure relating to the firm's internal vote allocation methods.

While we support investor education and believe that it will lead to more informed voting, we do not believe that it will, alone, lead to greater participation by individual investors in the proxy voting process. We believe that it can have that impact, but only when coupled with other tools that make it easier and more time-efficient for individuals to participate.

The websites of some brokers already facilitate proxy voting by their clients. These websites provide notice of future meetings, as well as the ability to access proxy materials and provide

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We are not aware of any evidence to support this claim, which is inconsistent with the fact that brokers have no interest in a client's classification as a NOBO or OBO. If brokers have any interest in the matter, it is only that their clients are satisfied with the election made and its consequences. Clients who receive unwanted communications from proxy solicitors sometimes hold the broker responsible for the disclosure of their personal records, even though the broker has only complied with rules requiring that the client be defaulted to NOBO status at account opening. As discussed in this letter above, furthermore, this issue is not always a top priority for clients, and the issue frequently does not even come up.

voting instructions electronically.[16] Some brokers do not provide this functionality at this time, but the availability of this type of service is relatively new, and different brokers offer differing levels of client service. Broadridge's *ProxyVote*, furthermore, already provides investors an electronic proxy voting platform. In addition to serving as a voting platform, *ProxyVote* can provide an investor notice of an upcoming shareholders meeting by email. Some brokers may view the availability of *ProxyVote* as sufficient to meet client needs.

In all events, we believe that the SEC's approval of a practical approach to a system for "client directed voting" might encourage the implementation of proxy functionality on brokers' websites or on associated third party websites as a necessary foundation for the new system.

We support a system of "client directed voting," which the Concept Release refers to as "advance voting instructions," along with other measures that make it easier for individual investors to vote.

We support the implementation of a system of "client directed voting," or "standing instructions," for retail and other shareholders to be implemented by brokers and bank custodians. We support measures that would directly facilitate proxy voting by retail investors, and we believe that client directed voting is such a measure.

In response to the questions in the Concept Release on this subject, we believe that a system of client directed voting implemented by brokers would result in more participation by individual investors in the proxy voting process. We believe that for many of our clients the cost in time to respond to voter instruction forms that arrive seriatim over the course of proxy season simply outweighs the perceived benefit, or impact on the overall vote or the company's governance. Measures that effectively make it easier to vote by lowering the cost in time and effort as compared to the benefit will result in more participation.[17]

We believe that at least one segment of clients will be eager to participate in a client directed voting platform: namely, those who are engaged, or who wish to become engaged, in their investments. Investor participation in such a platform, furthermore, will result in more informed voting because it will make it possible for investors to focus their time on those companies and proposals that require further consideration. An investor participating in a client directed voting program, furthermore, will be actively engaged with the broker's website, where proxy materials and other information may be readily available through electronic links. Investors who become engaged in proxy voting as a result of their use of new tools that make it easier to vote are more likely to review the proxy materials and other relevant information in the marketplace.

[16] For example, Broadridge provides the infrastructure for broker websites that combines in a single platform electronic delivery of proxy materials, corporate actions documents, and other account notices, electronic voting, and day-to-day account and investment information. According to Broadridge, implementation of this infrastructure leads to a material increase in investor consents to electronic delivery.

[17] We doubt that investors will ever vote at rates that compare to voting rates of institutions, which are typically motivated by fiduciary requirements, but even a 10% improvement in retail participation would be a material improvement.

In response to the Commission's concern noted in the Concept Release that retail investors may not actively monitor their standing instructions, we note that clients have for decades provided brokers and financial advisors with standing instructions that pertain directly to the investment decision itself in the form of limit orders and other forms of advance instruction. We believe that clients monitor those instructions, and that those who invest the time to participate with client directed voting would do the same. The Concept Release points out that institutional investors receive post-meeting vote reports, but the models for client directed voting developed by some vendors, including Proxy Governance, Inc. and Broadridge, would provide retail investors with comprehensive historical vote reports.

Like institutional investors, retail investors should have the option to choose to provide broad authority on voting matters, such as to vote in a manner that is either consistent with, or inconsistent with, the board's recommendations, or consistent with proportional voting. Individual investors have always had broad authority to instruct their brokers in buying and selling securities, and we see no reason to provide less flexibility in the proxy voting arena. The system should define certain special circumstances in which the CDV program would not operate, such as in the context of a proxy contest.

The Concept Release asks whether investors should be required to enter standing instructions on a company-by-company basis. We believe that atomizing the operation of the platform in this manner would not be feasible as a practical operational matter. Requiring investors to enter default choices for each company, furthermore, would discourage the participation of investors because it would reduce the efficiency offered by client directed voting. In addition, such an approach would deprive investors who wish to vote consistently across portfolios the opportunity to do so. For the same reasons, we believe that it would be unnecessary, and infeasible from an operational standpoint, to ask investors to re-affirm their standing instructions each time they add new equity securities to their portfolio.

Investors should have the option to tailor their votes on a company-by-company or proposal-by-proposal basis through a mechanism that permits them to override any applicable voting defaults when they receive or access the VIF or proxy card. We believe that this option provides investors with sufficient flexibility to register different voting decisions with respect to the same proposal among multiple portfolio companies.

We understand the Commission's concern that investors' standing instructions not become "stale." Numerous features can be built into the system to ensure that investors are reminded of their participation in the program, and that they have active standing instructions in place. A pop-up notice, for example, could provide such a reminder periodically when a client logs into a broker's website. A client would also be reminded each time he or she accesses a VIF or proxy card that contains pre-shaded boxes corresponding to active standing instructions. On top of such features, we believe that each firm could take steps to "refresh" the standing instructions of all participants periodically. We would propose doing so every 4 years. Each firm should have the option of either (1) refreshing all participating clients and active instructions at the same time every four years, regardless of whether the age of some standing instructions had not yet reached the four-year maximum time limit; or (2) refreshing client instructions on a rolling basis, and at such time as an instruction reaches the four-year maximum time limit without having been refreshed.

Because different brokers have different client demographics, and offer different levels of client service, it is important that each broker retain the option to offer client directed voting, to decline to offer it, or to offer it only to a segment of its client base. It is difficult to address the Commission's questions on cost allocation until we have a better understanding of the features of a permissible system, and costs can be quantified. However, if the Commission modifies its rules to permit the development of this concept, we would discuss appropriate cost allocation with issuers and other interested parties.

We would also support other measures to make it easier for individual investors to provide voting instructions, including the ability to include the proxy card or VIF together with the Notice for issuers using the "notice and access" model. While we support the appropriate use of plain English in proxy materials and the development of user-friendly formats, we believe that it is important that voting materials retain material consistency among issuers. An approach that permits each issuer to choose a different format for its voting form, for instance, could lead to investor confusion and undue complication. If formats varied widely, an investor seeking to fill out a VIF would have to spend time educating himself or herself about each distinct format before completing the form.

We do not support measures whose potential impact on retail voting and communications would be indirect and contingent on the accuracy of an attenuated line of assumptions about the future conduct of issuers and investors. This includes the theory that providing issuers with contact information for all beneficial holders will result in more shareholder communications and proxy voting. Absent unique circumstances, we do not believe that issuers will tend to communicate with small retail shareholders routinely, or that the latter will be receptive to such communications if they have already affirmatively selected OBO status. Measures such as "client directed voting" will have a much higher likelihood of success because they directly address the problem.

We do not believe that "over-voting" is a systemic problem that reflects an underlying defect in the proxy system, but we support an initiative designed to ensure that vote tabulators address broker voting discrepancies in a consistent manner designed to ensure a complete and accurate voting record

As the Concept Release points out, "over-voting" instances do not impact ultimate voting results because they are generally corrected before a broker's vote report reaches the tabulator. In rare instances where an instance of over-voting reaches the tabulator, it should be corrected at that point. Over-voting can occur as a result of share lending or (less frequently) as a result of "fails to deliver" where the broker records a customer's security in his or her account but has not yet received the security.

According to Broadridge, 95% of its clients subscribe to its over-voting prevention service, encompassing over 300 nominees. This service compares the vote reported by the broker or other nominee to the number of shares on account at DTC, and reports back to the nominee instances in which the two records do not match. Broadridge further reports that a few nominees do not subscribe to their service, but that in those cases discrepancies are rectified by the tabulator.

We are aware of some instances in which the accuracy of a vote was threatened as a result of human error or some other isolated data breakdown that did not reflect any flaw in the proxy voting and distribution system. In one example, a potential voting error reportedly resulted from a participant's failure to reflect properly an issuer's contemporaneous reverse stock split. These types of incidents, when they occur, can be serious, and parties involved should take steps to ensure that they are fully rectified and are not repeated. However, for the purposes of systemic issues identified in the Concept Release, it is important to bear in mind that isolated data breakdowns do not reflect a flaw in the overall system, regardless of whether they are referred to generically as "over-voting."

We understand that some discrepancies may from time to time result because the vote tabulator may not have access to all relevant information necessary to reconcile a broker's vote report with the broker's DTC account. This can occur, for instance, if the broker has multiple accounts with DTC, or if the broker holds shares through accounts with other institutions/depositories. We believe that improved communication between brokers and tabulators would assist in the efficient resolution of these types of issues, and we intend to seek out ways to commence such a dialogue with tabulators and related trade groups.

According to the Concept Release, some tabulators respond to a reported broker voting imbalance by rejecting the entire vote submitted by that broker (without asking the broker to rectify the imbalance), or by reducing the submitted votes in an arbitrary manner. These approaches, to the extent that they occur, in our view are not designed to achieve the most accurate voting results. We would support an industry or SEC initiative to ensure that tabulators pursue a consistent approach to resolving vote imbalances. We believe that all tabulators should contact the broker or bank in question to rectify, and re-submit, the imbalance.

We take seriously our role in the proxy voting and shareholder communications system, and we understand that systemic and other problems – to the extent they arise within the scope of our operations – are our responsibility to address and rectify.[18]

We support a requirement that brokers disclose the manner in which they allocate votes to their clients

The Concept Release asks whether we support requiring brokers to disclose their methods for reconciling client accounts for proxy voting purposes. We support this approach, and believe that a broker should include this disclosure either on its website, or in a plain-English document provided to the client at account opening.[19]

Brokers typically choose an approach to reconciliation that they believe best suits their clients. As described in the Concept Release, brokers have adopted different approaches. Some brokers, including some of the largest brokers, take a pre-reconciliation approach, which means that they

[18] See e.g., SIFMA, "Suggested Practice Guidelines for Proxy Process," at http://www.sifma.org/services/techops/pdf/ProxyGuidelinesSep2006.pdf , which reminds firms that it is their responsibility to have controls in place that address "over-voting" concerns.

[19] Brokers should have discretion to choose from between these two forms of disclosure depending on the manner in which the client communicates with the broker (e.g., paper vs. electronic), and on the broker's characteristics (e.g., the extent to which the broker's clients are registered users of its website, and where its clients would normally expect to see these types of materials).

allocate votes to clients that are net of shares held in margin accounts that have been loaned by the broker. Other brokers, also including some of the largest brokers, follow a post-reconciliation approach, in which votes are allocated based on the number of shares held in client accounts, and then later adjusted, if necessary, if more votes would be registered than are in the broker's account with DTC. Brokers with a significant proportion of retail clients may prefer post-reconciliation because it provides greater flexibility in allocating votes to clients who have indicated a desire to vote.

We believe that the two approaches have different implications. Post-reconciliation results in more retail votes, since votes tend to be allocated in favor of those clients who wish to vote. Assume that a client has 100 shares in his or her margin account, 50 of which are loaned by the broker. Under pre-reconciliation, that investor would receive a voting form reflecting 50 votes. Under post-reconciliation, that investor would be allocated initially 100 votes, subject to that number being reduced if the total number of votes the broker would report to the tabulator exceeds the number of votes in the broker's account with DTC.

On the other hand, pre-reconciliation creates a standard method that is simpler and more easily understood, and avoids readjustments later. It also is more predicable from the client's perspective, due to the lack of subsequent re-adjustments. Proponents of the pre-reconciliation approach point out that pre-reconciliation better respects an affirmative decision of a client to refrain from voting his or her shares, since those votes would not be re-allocated to a different client.

Clients who are accorded more votes under a post-reconciliation regime than they would under a pre-reconciliation regime nonetheless have an economic interest in all of the shares so allocated, so we see no significant policy rationale for precluding brokers from implementing a post-reconciliation approach. In its recently adopted proxy access rules, the Commission appears to have reflected its agreement that shareholders continue to have a direct vote-able interest in shares that have been loaned to third parties. Under those rules, subject to a few conditions, investors are permitted to count such shares toward the 3% threshold for placing director nominees on the company's proxy card. Accordingly, permitting brokers to allocate votes to clients who wish to vote, regardless of the loan status of their margin shares, is consistent with the approach the Commission adopted under its proxy access regime.

The Concept Release addresses the potential costs associated with different approaches to vote allocation. We would add to this discussion a few clarifications. First, requiring brokers to change from one reconciliation method to another would involve the occurrence of one-time costs for systems development, policy documentation, and training of staff. Some parties believe that pre-mailing reconciliation is a more costly system to operate on a day-to-day basis. Relative costs likely vary depending on the individual firm and the methods that it uses, but in all events we do not believe that any cost differences among various approaches are material. Regardless of the reconciliation method chosen, most reconciliation is performed by an automated system. In a pre-mailing reconciliation system, the automated process occurs prior to the mailing of voting instruction forms. Under the post-mailing reconciliation system, an automated reconciliation occurs daily as the voting returns are tabulated. In a post-mailing reconciliation, the manual process needed when an adjustment must be made is time-consuming, and likely adds to the overall costs associated with that approach.

We would support a rule that would require tabulators and other proxy intermediaries to cooperate in order to provide interested investors with vote confirmations

The Concept Release identifies lack of cooperation among market intermediaries as an obstacle to the consistent availability of vote confirmations. We made the same point in our Report, and would support a rule requiring all participants to cooperate in order to provide interested investors with vote confirmations. With such cooperation, intermediaries can provide vote confirmations today to investors who desire confirmations. We do not believe that there is a demand currently among retail investors for vote confirmations, so we would urge the Commission to avoid requiring intermediaries to make them available to retail investors absent a showing that such demand exists. We do not believe that any further regulatory measures are justified on this subject.

The Concept Release seeks comment on a system that would attach a code to shares for voting purposes, identifying street names shares to specific beneficial owners. It is unclear how such a system would work in practice, and we would need further information in order to evaluate the proposal. We would note however that history and experience cautions that any system that identified specific shares to specific shareholders could be costly, overly complicated, confusing to investors, and result in processing delays.

We do not a believe that "empty" voting is a significant or systemic problem in the United States, but would support measures – were they determined to be necessary – to preclude investors from borrowing shares with the sole or primary purpose of influencing a proxy vote

As noted in the Concept Release, brokers are precluded by Regulation T from lending shares in manner that would facilitate "empty voting." We do not know if others outside the broker community lend shares for these purposes in the United States, but we are unaware of such a practice if it exists. Accordingly, it is not apparent that further regulation in this area is justified, but we would support such regulation to the extent that it is shown to be necessary and appropriate.

In drafting rules in this area, it is important to recognize that many investors manage risk in the normal course of business without any purpose to influence a proxy vote. Thus, any proposal to directly tie an investor's voting power with its net economic stake in a company could have serious unintended adverse consequences for a wide spectrum of legitimate business activity. Any rules in this area should be carefully crafted to focus on the activity of concern, and address situations where a client has acquired voting power without accompanying economic risk and it is shown that the client did so with the *specific intent* to influence a proxy vote. Accordingly, we believe that any approach that broadly ties an investor's right to vote with its long economic interest, or that otherwise broadly required disclosure of related hedging positions, would unnecessarily curtail proxy voting that everyone would view as legitimate and in furtherance of the purposes of the federal and state proxy rules.

We support a new examination of proxy distribution fees by a group that includes representatives of interested parties as the most appropriate and efficient method for addressing the questions and issues reflected in the Concept Release

In the Concept Release, the Commission states that it is an appropriate time for the SROs to engage in a re-examination of the proxy distribution fee structure. We agree, and would be happy to participate in such a re-examination. We understand that the New York Stock Exchange has commenced such a re-examination. The establishment of a representative, expert group in the past has been the best approach to addressing the complex details that would apply to a comprehensive evaluation of proxy distribution fees. Such an approach is also a more appropriate forum if market participants are asked to provide sensitive or proprietary data and other information.

In response to the Commission's questions included in the Concept Release, we would offer a few general observations:

- The Commission permitted brokers and bank custodians to delegate proxy distribution to designated agents in order to achieve economies of scale, and resulting lower overall costs;

- As detailed in our Report, postage and printing are major cost components of proxy distribution, and offer issuers significantly greater potential for savings than marginal reductions in unit fee distribution costs.[20] Printing and postage costs continue to be eliminated in growing numbers as a result of electronic or Internet delivery of proxy materials;

- The incentives included in the current proxy distribution system have been sufficient to result in significant savings to issuers, including more than $800 million in 2009 alone;

- It is uncertain whether any of the alternative approaches to proxy distribution would result in lower distribution costs for issuers generally, and indeed all outstanding proposals would appear to increase the system's complexity from an operational standpoint and from the viewpoint of investors, and they may result in higher costs for some or all issuers;

- The implementation of a new, alternative system: (1) would involve start-up costs, which may be significant, (2) would likely impair efficiencies that result from economies of scale; and (3) may result in the loss of some of the savings associated with efficiencies developed under the current system; and

- New functionality required for mandatory "say on pay" proposals, the possible implementation of the new proxy access rules, along with any new tools to increase the overall participation of retail shareholders will undoubtedly introduce new pressures on the proxy distribution system, which could likely impact operational costs.

We believe that issuers are unlikely to adopt a "dual record date" approach in any significant numbers, and that the resulting logistical complications and investor confusion would be unjustified

[20] SIFMA Report, at 13-15.

We do not believe that issuers are likely to adopt a dual record date approach in significant numbers even if the Commission modifies its rules to facilitate issuers' ability to adopt a second record date for voting purposes. We understand and support the goals sought to be furthered by the dual record date option. However, even with rule modifications, we believe that issuers will likely be adverse to the timing and other logistical issues presented by a voting record date so close to the date of the annual meeting.

We are also concerned that the implementation of dual record dates might result in investor confusion insofar as the number of votes an investor is notified that it has the power to vote after the first record date would be subject to change after the second record date.

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We appreciate this opportunity to comment on the Proposal. If you have any questions concerning these comments, or would like to discuss these comments further, please feel free to contact the undersigned at 212-313-1260 or via email at tprice@sifma.org.

Sincerely,

Thomas F. Price