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October 20, 2010

Via E-mail – (rule-comments@sec.gov)

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

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

Dear Ms. Murphy:

On July 14, 2010, the Securities and Exchange Commission (the "Commission") published for public comment the above-referenced release entitled: "Concept Release on the U.S. Proxy System" (the "Concept Release") seeking public comment on various aspects of the proxy system for U.S. public companies. We support the Commission's effort to examine the proxy system. Our comments and suggestions regarding the Concept Release are set forth below.

I. Action to Facilitate Retail Investor Voting Participation

We support the interest of the Commission in increasing and facilitating retail investor voting participation. As noted in the Concept Release, retail vote participation has become even more important since the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act and recent amendments to New York Stock Exchange Rule 452, which limit the ability of brokers to vote uninstructed shares.

We believe that one important means for facilitating such participation would be to allow retail investors to submit advance voting instructions to their brokers. We believe that allowing retail investors to give their brokers advance voting instructions would encourage greater participation by retail investors and restore a measure of balance to shareholder voting by producing a vote that is more reflective of the views and interests of an issuer's entire shareholder base.

Also as noted in the Concept Release, it has been suggested that the Commission's adoption of rules permitting the dissemination of proxy materials through the "notice and access" framework in Rule 14a-16 under the Securities Exchange Act of 1934 has contributed to a decline in retail investor participation in voting. The Concept Release acknowledges that "the number of retail accounts submitting voting instructions when issuers use the notice-only option is lower than the number of retail accounts submitting voting instructions when issuers use the full-set delivery option."

The Concept Release notes that one alternative to encourage shareholder participation, while still allowing issuers to use the notice-only option, would be to permit the inclusion of a proxy card or Voting Instruction Form ("VIF") with the Notice of Internet Availability of Proxy Materials when an issuer or other soliciting shareholder elects to use the notice-only option for the delivery of proxy materials. We support this alternative. Currently, Rule 14a-16 explicitly prohibits the soliciting party from including a proxy card or VIF with the initial Notice of Internet Availability of Proxy Materials in the same mailing. Although the Commission initially proposed a model that would have allowed soliciting parties to include a proxy card or VIF with such Notice, it ultimately adopted a rule that prohibited the inclusion of the proxy card or VIF. We believe the Commission should now amend its rules to adopt an "access equals delivery" framework for proxy materials that would permit inclusion of a proxy card or VIF with a Notice of Internet Availability of Proxy Materials.

In addition, we believe that the Commission should simplify the notice and access rules, and we suggest that the Commission consider eliminating timing differences resulting from the use of notice-only procedures on the one hand and full-set delivery on the other hand. We believe that these changes would increase and facilitate retail investor voting, as discussed below.

A. Advance Voting Instructions

With the decline in retail investor voting coupled with the increase in the number of fiduciaries who invariably follow the counsel of certain proxy advisory firms, issuers are likely to find themselves on the wrong end of a tilted playing field when they seek shareholder approvals. We believe that allowing retail investors to give their brokers advance voting instructions could play an important role in remedying the decline in retail investor participation, thereby producing a vote that better reflects the preferences and interests of an issuer's entire base of stockholders. Required disclosures in proxy statements have historically informed retail investors that, absent any instruction from them to their broker, certain matters would be voted by their broker on their behalf in the broker's discretion. However, Section 957 of the Dodd-Frank Act, NYSE Rule 452 and the rules of the other national securities exchanges now

substantially restrict the ability of brokers to exercise discretion to vote shares for which no instructions have been given by their beneficial owners.

We believe that an advance voting instructions from a retail investor can be structured in a manner that will result in a vote that is at least as well considered as that of the many institutional voters that follow the counsel of proxy advisors without independent reflection. We also believe that, as discussed elsewhere in this letter, internet access to proxy materials should equal delivery, and that retail investors could receive an appropriately structured proxy card or VIF with a Notice of Internet Availability of Proxy Materials. In that manner, any investor who had given advance voting instructions could rescind or revise those instructions by checking one of the election boxes on the proxy card or VIF and mailing it to the investor's broker. This is essentially the same procedure currently required of a retail investor who wishes to vote, but it would relieve the investor of the burden of taking any action if the investor is satisfied with the instructions previously given to the broker. Since no investor would be required to give advance voting instructions, and could rescind any instructions previously given, either in whole or with respect to a particular vote on one or more specific matters, the adoption of advance voting instructions should be seen as a convenience to the retail investor and an aid to greater retail investor participation in the voting process. Moreover, such a procedure would place a retail investor in a position similar to that of many institutional investors who provide standing instructions to their proxy advisors that can be reversed or rescinded by them at any time before the related shareholders' meeting.

Although several models for advance voting instructions with varying complexities have been proposed by interested parties such as the Society of Corporate Secretaries and Governance Professionals, we believe that at a minimum retail investors should be allowed to instruct their brokers to vote in favor of, or against, the recommendations of the board of directors of the companies in which they have invested. For most retail investors, this would provide them the ability to express their basic support for, or opposition to, the board's performance. Under this model, if an investor wished to cast its votes differently on a specific issue, it would retain the right to override its standing instructions by submitting a VIF to the broker indicating the revised instruction.

B. Access Equals Delivery

Under current rules, an issuer may not send a form of proxy to shareholders unless at least 10 calendar days or more have passed since the date it first sent the Notice of Internet Availability of Proxy Materials to shareholders and the form of proxy is accompanied by another copy of the Notice of Internet Availability of Proxy Materials (or a full set of the proxy materials).

We believe that the proxy rules should adopt an "access equals delivery" model similar to the model used in Rules 172 and 173 under the Securities Act. Those rules provide that a final prospectus need not be delivered to a purchaser of securities. In effect, the purchaser is deemed to have received the final prospectus by virtue of its availability on EDGAR. In lieu of the final prospectus, a notice is required to be sent to the purchaser under Rule 173, and the purchaser may request a copy of the final prospectus if desired. This is essentially an opt-out, access equals delivery framework. We believe the Commission should adopt a similar opt-out, access equals delivery framework for proxy materials and that shareholders should be deemed to have delivery of proxy materials if such materials are available on EDGAR and if the shareholder has received a Notice of Internet Availability of Proxy Materials.

We believe that, in the years since the Commission's initial rulemaking effort regarding the electronic delivery of proxy materials, Internet access has become sufficiently widespread to allow an opt out, access equals delivery framework for proxy materials. If shareholders desire to review proxy materials, they would be able to access such materials on the Internet. The small percentage of shareholders that does not have adequate access to the Internet or that otherwise desires printed materials would be able to request them. In addition, a shareholder would be able to make a permanent election to receive printed materials for all future meetings, in addition to requesting materials for the upcoming meeting. Thus, shareholders who desire to receive paper copies would be able to do so on a permanent basis or on a meeting-by-meeting basis. In any event, we understand that only a small percentage of retail shareholders request printed materials.

C. Simplify Process

In addition, we believe that the requirements relating to the use of the notice-only option should be simplified to increase retail vote participation.

We understand that there have been reports of shareholder confusion and frustration as a result of the notice-only option. Under the notice-only option, a shareholder must go through two or more steps to vote. First, the shareholder must read the Notice of Internet Availability of Proxy Materials (but does not receive and cannot return a proxy at that time). Second, the shareholder must make the effort to either access the materials on the Internet and print them if desired, or request that a copy of the printed materials be delivered. After that, the shareholder can vote on the Internet or by calling a toll-free number, but would not have a proxy card or VIF and reply envelope that could simply be completed and mailed in. In some cases, the shareholder also may receive a second mailing that includes a proxy card or VIF.

All of this is unnecessarily confusing and complex for retail shareholders. Furthermore, if a shareholder holds 30 publicly traded companies and 15 of those use the notice-only option,

the shareholder would have to complete this complex and confusing process 15 times – every year. Accordingly, it is not surprising that retail vote participation has declined under the notice-only option.

The complexity of the notice-only rules, the additional effort required and the confusion the notice-only rules have caused have had the unintended effect of reducing retail shareholder voting because shareholders are not willing to undertake the effort to vote, are frustrated by the actions required to be able to vote or do not understand how to vote. This reduction in retail shareholder voting participation has had the effect of further increasing the influence and leverage of more short-term institutional and other shareholders who may not have the same interests as longer-term retail shareholders. In addition, the reduction in retail shareholder voting participation also exacerbates the concerns with respect to empty voting, because short-term institutional and other shareholders are more likely than retail shareholders to actively trade their shares, including in the period between the record date and meeting date, or engage in hedging or other transactions that decouple voting from economic interests. Thus, the burdensome requirements of the notice-only rules could also exacerbate the effects of empty voting. Empty voting is discussed further below.

The full-set delivery set option is simpler and more straightforward. A shareholder receives a single mailing containing all the materials needed to vote. A shareholder can mark and mail back the proxy card or VIF from this mailing, whether or not the shareholder reads the proxy materials.

The notice-only option should be similarly simple and umcomplicated. A shareholder should receive a single mailing containing all the materials needed to vote. This would include a Notice of Internet Availability of Proxy Materials, a proxy card and a reply envelope.

D. Time Periods

In addition, we recommend that the Commission consider making time periods the same whether an issuer is using the notice-only option or the full-set delivery option. For instance, if an issuer can send out a printed proxy statement and proxy card 20 days in advance of a meeting, it should be able to send out a Notice of Internet Availability of Proxy Materials 20 days in advance of a meeting together with a proxy card. Using the notice-only option should permit substantially the same time periods as using full-set delivery. We believe that this flexibility, combined with the other recommendations above, would increase retail shareholder participation.

Under current rules, when using the notice-only option, an issuer must send record holders a Notice of Internet Availability of Proxy Materials at least 40 calendar days or more

prior to the shareholder meeting date. This requires the issuer to be in a position to file its proxy materials with the Commission and post them to its web site by the 40th day prior to the meeting, and also to be in a position to deliver copies of the proxy statement upon request after posting the materials to the Internet site. Because the printing and mailing process takes time, this requires the issuer to complete and begin the printing process for its proxy statement at least several days before the 40th day prior to the meeting date.

In addition, an issuer using the notice-only option must provide banks, brokers and dealers with all information in the issuer's Notice of Internet Availability of Proxy Materials in sufficient time for such intermediaries to prepare, print and send their own Notice of Internet Availability of Proxy Materials to beneficial owners at least 40 calendar days before the meeting date. Accordingly, this information needs to be provided to banks, brokers and dealers about 45-50 days prior to the meeting.

As a result, as a practical matter, an issuer using notice-only must establish a record date of up to about 50 or more days prior to the meeting date. This is necessary because the issuer must prepare a shareholder list as of the record date, reconcile the shareholder list, and then provide this information to the transfer agent or other party to overprint the record date shareholder names and addresses on copies of the Notice of Internet Availability of Proxy Materials in sufficient time to assure a mailing date not later than the 40th day prior to the meeting date. Many companies may have difficulty meeting this longer time period, particularly considering the increasing amount of required executive compensation and other disclosures in proxy statements.

In comparison, if the full set delivery option is used, the record date could be anywhere from about 35 to 25 days prior to the meeting date, depending on how far in advance of the meeting the proxy materials are mailed. In most cases, an issuer can mail the proxy materials as late as approximately 30 to 20 days prior to the meeting. As a result, the proxy statement itself need not be completed and printed until about 35 to 25 days prior to the meeting date.

In addition to the adverse effect on retail vote participation, the notice-only rules further exacerbate the possible decoupling of voting from economic interest, because the additional period between the record date and meeting date increases the proportion of persons entitled to vote at the meeting who are no longer shareholders at the time of the meeting date, due to a greater period of time during which shares can be sold. Thus, permitting the record date for companies utilizing the notice-only option to be closer to the meeting date, as it is with the full set delivery option, would also assist in better matching of voting and economic interests. Empty voting is discussed further below.

As noted in the Concept Release, unless there are certain required time periods (such as due to incorporation by reference or use of consents), there are no specific time periods required under proxy rules relating to the delivery of proxy materials, except that they:

> "must be mailed sufficiently in advance of the meeting date to allow five business days for processing by the banks and broker-dealers and an additional period to provide ample time for delivery of the material, consideration of the material by the beneficial owners, return of their voting instructions, and transmittal of the vote from the bank or broker-dealer to the tabulator."

See Release No. 34-33768, note 4. Although this is true for companies using full-set delivery, the rules discussed above require companies using the notice-only option to have their proxy statements ready and printed by the 40th day prior to the meeting date so that they can be delivered upon request any time thereafter.

We believe that it should be sufficient that the Notice of Internet Availability of Proxy Materials and proxy card or VIF are delivered within the time periods permitted by state law and other Commission rules. Although there may be limited circumstances where shareholders will not have sufficient time to obtain materials and vote their shares, this is no less the case with full-set delivery. For instance, if an issuer mails its proxy materials only 20 days prior to a meeting, due to mailing and processing times, possible change in addresses, possible sales and purchase transactions and other factors, certain shareholders may not have an opportunity to receive their materials and return their votes by the deadline to permit their votes to be counted, considering the time required to process and distribute information to street-name holders, obtain their VIFs and submit this information so that it can be counted.

Accordingly, we believe the time periods under the notice-only option should be revised to be consistent with those under the full set delivery option.

II. Action to Address Empty Voting and Related Decoupling of Voting from Economic Interest

As noted in the Concept Release, regardless of whether empty voting is deemed to be "good" or "bad," there is a strong argument for ensuring that there is transparency about the use of empty voting. If a shareholder acquires shares with a view to influencing or controlling the outcome of a vote but takes steps to reduce its risk of economic loss or even achieve a negative economic interest, disclosure of the empty voting shareholder's status and intentions could be material information to other shareholders. We believe current rules do not sufficiently provide

disclosure of or transparency about the use of empty voting, and accordingly, we believe that the Commission should require increased disclosure of and greater transparency into empty voting, decoupling, hedging and similar activities.

A. Existing Rules

We believe existing disclosure requirements under Sections 13(d), 13(f) and 13(g) of the Exchange Act and other provisions of federal securities laws are not sufficient to address the entire range of possible techniques of equity, debt, and hybrid decoupling as described in the Concept Release.

In particular, there may be no disclosure by a person or group unless such person or group concludes that it is a "beneficial owner" of the securities, as defined in Rule 13d-3 under the Exchange Act. Furthermore, consistent in some regards with the proxy access rules adopted by the Commission on August 25, 2010, what is relevant with respect to empty voting is not beneficial ownership, which includes securities in which a person or group has a right to acquire within 60 days, but rather information with respect to the right to actually vote such securities at a meeting of shareholders (which would require that such securities be outstanding), as well as the economic interest in such securities.

Even if a person or group concludes that it is a beneficial owner of securities, disclosure is not required unless the person's or group's beneficial ownership interest exceeds 5%. However, the economic or percentage of voting power threshold could be material to the issuer and its security holders at a level below 5%, particularly if multiple shareholders that own a significant percentage of securities (but less than 5%) are involved in transactions that decouple economic interests from voting.

Furthermore, even if a person or group concludes that it is required to report beneficial ownership that exceeds 5%, such person or group would not be required to disclose any contracts, arrangements, understandings or relationships with respect to the securities if such person or group concludes that it is qualified to file Schedule 13G rather than Schedule 13D.

In addition, even if a person or group owns greater than 5% and determines that it is required to file a Schedule 13D, such person or group may conclude that the decoupling technique used by such person or group is not covered by the requirement to disclose contracts, arrangements, understandings or relationships under Item 6 of Schedule 13D.

We also believe that disclosures on Schedule 13F are not sufficient to provide transparency regarding the types of decoupling transactions described in the Concept Release in most cases. This schedule is limited to institutional money managers who hold at least $100

million in U.S. equities, is only filed on a quarterly basis and is not required to be filed until 45 days after the end of the quarter. In addition, only publicly traded U.S. equity securities are required to be disclosed. This schedule would not include any disclosure of the type of equity, debt and hybrid decoupling transactions described in the Concept Release.

For the reasons described above, in our view the existing requirements under Section 13(d), 13(f) and 13(g) of the Exchange Act are not sufficient to address the entire range of possible techniques of equity, debt and hybrid decoupling as described in the Concept Release.

B. Possible Action by Commission to Improve Transparency

Considering that the right to vote is a traditionally and properly a matter of state corporate law, we believe that the appropriate approach by the Commission would be to require increased disclosure that creates transparency into techniques of equity, debt and hybrid decoupling, rather than for the Commission to attempt to adopt substantive regulation in this area.

However, if pursuant to state law or an issuer's articles or bylaws, there are substantive limitations on empty voting or other forms of decoupling, the Commission could accommodate the implementation of such limitations by, for instance, requiring disclosure or ownership certifications on the form of proxy or VIF.

In particular, we support the suggestion in the Concept Release that voters be required to certify on the form of proxy or VIF that they held the full economic interest in the shares being voted at the time the proxy was executed, except to the extent disclosed by such voter. For instance, if a person voting securities on a VIF was a party to transaction or arrangement that hedges, shorts, lends or otherwise decouples the economic ownership from the voting ownership of such securities, or if such person voted such shares through a securities-borrowing or a "vote buying" transaction or arrangement, such person would be required to disclose the material terms of such transaction or arrangement before returning the VIF.

A person or group that must disclose any separation of economic interests from shares being voted could also possibly be required to disclose this information under cover of Schedule 14A, similar to filings of additional proxy solicitation materials, or on a new schedule adopted for such purpose under the proxy disclosure rules. For instance, reference is made to the Schedule 14N that was adopted by the Commission in connection with the adoption of the proxy access rules on August 25, 2010. In particular, certain requirements of Schedule 14N relating to share ownership, short positions and loaned securities may provide an example for such a schedule.

The foregoing certification and disclosure could be limited to persons or groups that are voting at least a certain minimum percentage of shares of a class of equity security, such as 0.5% or 1% of each class entitled to vote.

In addition, if after making the certification described above the person or group thereafter sells such securities or enters into any transaction or arrangement that decouples the economic interest from the voting interest, such person or group similarly could be required to promptly disclose the material terms of such transaction or arrangement under cover of Schedule 14A or on a new schedule adopted under the proxy disclosure rules. For instance, if a shareholder who completed a VIF with respect to more than the threshold amount (such as 0.5% or 1%) of securities that were held on a record date later enters into any transaction or arrangement that hedges, shorts, lends or otherwise decouples the economic ownership from the voting ownership of the securities, or sells some or all of such shares, such shareholder could be required to promptly file a schedule disclosing the material terms of such transaction or arrangement, if this occurs prior to the meeting date. Due to the fact that transactions could occur right up to the meeting date, the notice should be required to be filed within one business day of the applicable transaction or arrangement.

A shareholder would have liability for any material misstatement or omission in the information disclosed on the schedule that is filed with the Commission, for a failure to file the schedule, and for a failure to file the schedule on a timely basis.

C. Possible Action by Commission with Respect to Advance Notice of Meeting Agenda

While we support the above described steps to provide additional transparency into empty voting, we do not endorse, as a response to empty voting and decoupling issues, a requirement that issuers disclose publicly annual meeting agenda items in advance of the distribution of proxy materials to shareholders. We do not endorse such a requirement primarily due to concerns around administrative feasibility of such a requirement.

As a general matter, we believe in many cases the final agenda for a meeting may not be determined until around the time the proxy materials are filed. We understand that issuers may engage in negotiations with shareholders who have submitted proposals under Rule 14a-8 and it is not uncommon for such discussions to remain unresolved until immediately prior to filing of proxy materials. Further, as the Concept Release notes, boards of directors of companies may not have taken action with respect to recommending agenda items at the time the pre-notice would be required to be filed. For these reasons, we believe a requirement that issuers disclose publicly annual meeting agenda items in advance of distribution of proxy materials to shareholders would impose a substantial burden on issuers preparing for the annual meeting process.

We also note that the Concept Release indicates that the primary concern driving this proposal is that investors who have lent securities may wish to recall them for a material vote. We believe the Commission should consider whether more limited disclosure where an issuer would only be required to disclose material items to be considered, if any, but not all agenda items, would satisfy the concerns of these investors without imposing as significant a burden on issuers preparing for the annual meeting.

III. Action to Address the Role of Proxy Advisory Firms

The Concept Release sought comment on the role of proxy advisory firms. As corporate counsel to a large number of registrants, we have on numerous occasions assisted clients in their interactions with proxy advisory firms such as Institutional Shareholder Services ("ISS"). While we recognize that ISS and other proxy advisory firms play an important role within the proxy system, we have significant concerns regarding the manner in which they play that role. In particular, we have concerns about the "one-size-fits-all" approach that some proxy advisory firms take in their articulation of voting guidelines and the influence that those guidelines carry. In addition, we have seen numerous occasions in which voting recommendations issued by a proxy advisory firm appear to have been based on an apparent misapprehension of the underlying facts.

We support the views on this matter of the New York Stock Exchange Commission on Corporate Governance ("CCG") which on September 23, 2010 issued a report that stated, among many other things, that "[CCG] recognizes the influence that proxy advisory firms have on the market, and believes that such firms should be held to appropriate standards of transparency and accountability." We support CCG's recommendations that (1) "the SEC should engage in a study of the role of proxy advisory firms to determine their potential impact on, among other things, corporate governance and behavior and consider whether or not further regulation of these firms is appropriate," (2) proxy advisory firms "should be required to disclose the policies and methodologies that the firms use to formulate specific voting recommendations, as well as material conflicts of interest, and to hold themselves to a high degree of care, accuracy and fairness in dealing with both shareholders and companies by adhering to strict codes of conduct," and (3) proxy advisory firms "should also be required to disclose the company's response to [the advisory firm's] analysis and conclusions."

We believe that a new regulatory framework may be needed to govern proxy advisory firms, given their considerable influence, to ensure that their recommendations are generated in a manner that facilitates appropriately informed voting by the institutions that are the clients of such firms. In particular, we believe that a regulatory framework should be developed whereby, at a minimum, an issuer that is the subject of a report issued by a proxy advisory firm is given an

opportunity (i) to review and comment on such report in meaningful way prior to its issuance and (ii) to include, if it wishes to do so, a response in the materials that are ultimately provided to the advisory firm's clients.

IV. Possible Action with respect to Requiring Issuers to Provide Proxy Statement and Voting Information to the Commission and on Corporate Web Sites in XBRL Format

We support the Commission's efforts to help facilitate the flow of information regarding issuers to investors. However, we do not endorse the implementation of eXtensible Business Reporting Language ("XBRL") data tagging for proxy statements, as proposed in the Concept Release. Issuers have devoted significant time and resources to data tagging of Quarterly Reports on Form 10-Q ("Form 10-Qs") and Annual Reports on Form 10-K ("Form 10-Ks") in the past year. Due to the volume of issuers and data tags, financial printers have accelerated the deadline to submit final financial data. These volume and associated time constraints may increase as additional issuers, including smaller reporting companies, mutual funds and foreign private issuers, phase in XBRL and large accelerated filers in the second phase-in group begin detail tagging their data files. Due to the proximity in the timing of filing Form 10-Ks and proxy statements, providing compensation and other proxy statement information in XBRL format could impact not only the proxy statement but also data tagging requirements for Form 10-K.

In addition, we believe data tagging of compensation and other information in the proxy statement may not provide useful comparative data to investors. While financial statements contain data calculated in accordance with generally accepted accounting principles that can be codified using standardized data taxonomy, many elements of executive compensation data may not be standardized among issuers and instead require custom tags for much of the quantitative data in a proxy statement. For example, issuers may use different methodologies to calculate the present value of an employee's pension and the "all other compensation" column of the summary compensation table may consist of a variety of elements, and issuers rely on extensive footnote disclosure to provide context to such quantitative data. Tagging such data without the qualitative context could lead to misleading data analysis for investors. Further, we believe data tagging non-executive compensation information, such as corporate governance policies or director experience, will not benefit investors since the context of such disclosure is issuer-specific.

For the foregoing reasons, we do not endorse extension of XBRL data tagging to executive compensation and other information included in proxy statements. In the event the Commission proceeds with the XBRL requirement, we endorse a separate filing deadline of ten calendar days after the deadline for the proxy statement due to the timing constraints imposed by data tagging generally and specifically with executive compensation information. We also encourage the Commission to permit such furnished filing to be made on a Current Report on Form 8-K in lieu of an amended filing.

* * *

We appreciate the opportunity to submit comments on the Concept Release and hope that these comments are useful.

Very truly yours,

/s/ SIDLEY AUSTIN LLP
SIDLEY AUSTIN LLP