



October 20, 2010

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

Submitted via email: rule-comments@sec.gov

Re: File Number S7 14-10 SEC Concept Release on the U.S. Proxy System

Dear Ms. Murphy,

Thank you for the opportunity to provide comments on the Concept Release on the U.S. Proxy System and for your efforts to understand and improve the current framework.

Shareowner Education Network is a grass-roots effort to galvanize the individual to act more like an owner. We are a 501(c)(3) organization representing the fundamental shareowner: the retail investor, the mutual fund beneficiary, and the public or private pensioner. Each shareowner is different, but all have a vested interest in the performance and efficiency of our markets. Our mission is to provide the tools and resources for individuals to become informed about their investments, to exercise their ownership rights and to influence the policies of their investment intermediaries.

We are pleased to offer a summary of our comments, followed by a more detailed analysis numbered according to the convention in the Release, to provide the average-investor point of view.

1. **Assist ordinary shareowners in getting access to information and automated voting platforms.** Voting is the crux of communication between investors and the board. Investors are responsible to exercise their voting rights, but as a practical matter, they require access to quality information, the ability to share resources with other investors and institutions, and access to quality vote platforms with automation and other technologies that eliminate the obstacles to voting. Change the rules so ordinary shareowners have these tools at their disposal. For the most part, we're still voting like its 1985, before the communication and technological improvements of the internet and the governance reform movement.
2. **Encourage development of voting platforms that include small shareowners by including a reasonable per-ballot fee in the proxy delivery fees paid by the issuer.** There are technological solutions for proxy distribution but little that adds value to the actual act of proxy voting. Third-party voting platforms can add value by automating the vote process and increasing the information and communication

avenues for individual shareowners, but they must be free to the user to have an impact. Per-ballot fees will increase competition of providers in this space and enhance the quality of the platforms. This will encourage voting among average shareowners, and their participation will benefit all investors.

3. **Change the old system of “black-hole” voting.** The Release shows the complexity of the current system, with its layers of players, opaque account pools and complex reconciliation procedures that can cut votes here and there to make the broker counts fit. As the Release points out, this may disenfranchise voters, encourage apathy, and invite error and abuse. Institutions and investors large and small agree: end-to-end confirmation is overdue. Ordinary shareowners want to be sure that the effort to vote will have a tangible effect.
4. **Regulate tabulation and create an audit trail.** Once shareowners can ensure our own votes are cast, we have to make sure they’ve been counted correctly. And that everyone else’s vote is counted accurately too. We need regulation to create an audit trail and to ensure fairness of the tabulation process.
5. **Streamline the communication process.** Discard the OBO/NOBO distinction. The current system increases complexity, adds unnecessary cost and does not serve the interest of shareowners. Allow competition to determine proxy distribution fees, so that shareowners can get the most value from this service.
6. **Introduce data tagging for proxy and N-PX filings.** This will increase the quality and accuracy of proxy information that reaches owners via proxy advisory firms, as well as to enhance the value of N-PX fund filings for investors. Our own organization has worked for three years with other groups to distribute a report on mutual fund voting of executive compensation matters, a subject near and dear to the ordinary shareowner. We can dramatically expand our coverage to other voting topics and increase the number of funds covered if data tagging is implemented, because it will lower the barriers to accessing and analyzing this information. The Commission’s efforts to enhance data technology will have this type of direct impact on the quality and breadth of information that reaches the average investor.
7. **Increase transparency in market practices and derivative securities that may lead to “Empty Voting”.** Conduct research to understand the scope and essence of these practices, so that regulation can be tailored to fit. Ensure that agendas are published before record dates so that large institutions have opportunity to pull back shares for important votes.
8. **Ensure Rule 14a-8 is being implemented as intended, and clarify its procedures if needed.** Rule 14a-8 is a key mechanism for protection of shareowner rights and advancement of governance reforms and serves as a robust source of important voting items. Incursions on technical obstructions should be avoided. We urge the Commission to reach out to investors to learn the style and extent of recent efforts to block proposals and to identify solutions that shareowners can seek when proposals are unfairly stymied by inventive and evolving corporate barriers.

II. The Current Proxy Communication, Distribution and Voting Process

We recommend end-to-end vote confirmation and believe that regulating the vote tabulation process would provide owners with a secure system and a vote result that is accurate and credible. As highlighted in the Concept Release, this role is often performed by the transfer agent, selected and employed by the issuer (although it is noted that in contests, an independent third party may be hired to certify important votes). This raises a concern that could be remedied by greater transparency, auditing, or regulating an independent tabulator. With increased confidence in fairness, shareowners will want to participate in the process.

III. Accuracy, Transparency and Efficiency of the Voting Process

A. Over-Voting and Under-Voting

While it is necessary to gather additional data regarding over- and under-voting to determine the course of regulation, in the interim, disclosure of vote allocation and reconciliation processes can provide a measured response to protect investors who should be aware of the effect share lending programs have on their ability to cast votes. All shareowners, including those with margin accounts, should receive accurate information about the number of shares they are eligible to vote, including shares that have been deducted due to loan, as well as lending income. Broker-dealers should subtract loaned shares proportionally over all margin accounts held, and notify investors of the loan's impact on their margin account. We need a transparent and open system that sheds its many layers and provides a clear listing of those eligible to vote and the corresponding shares, with no exception.

B. Vote Confirmation

We strongly recommend development of a robust system for vote confirmation, such as assigning a unique identifying code to allow an audit trail from vote casting to tabulation. Further, it would be beneficial if the identifying codes and corresponding share counts and vote instructions comprising the vote tabulation were filed along with the vote results to the Commission. The system cannot have the transparency and accuracy that shareowners deserve without a mechanism for ensuring the vote has been cast as instructed, for the correct number of shares, and counted in the final tabulation. The current inability to confirm voting information is the single most important weakness in the system, and fixing this flaw will require regulatory intervention. No matter in voting is more important than the guarantee that the results themselves are valid.

C. Proxy Voting by Institutional Securities Lenders

Funds should disclose all aspects of securities lending that affect their investors, such as the number of shares on loan over the record date and lending fees, as well as the

number of shares from any other missed voting opportunities and the actual number of shares that were voted for each meeting. This information is important to investors who are monitoring the stewardship responsibilities of funds. Further, we believe *any* institution that votes on behalf of beneficiaries should disclose similar information.

To assist funds and other investors making lending decisions, issuers should file their agendas for upcoming meetings at least ten business days before the record date. This will ensure that funds and investors can recall loans in the interest of voting. A press release or website announcement alone is likely not a sufficient method for disseminating this information. Any subsequent changes to the agenda should be limited to items for which the issuer is seeking no-action relief.

Agenda disclosure before the record date ensures that all participants will have access to the same information and that lending transactions will not reflect asymmetric information. This lessens the probability that the lending market could be effectively used for “empty voting”. Recalls in high amounts, if they do occur, would signal that the market and investors value the opportunity to vote, implying that agenda disclosure prior to the record date is valuable. Disorder to the lending market from recalls should be limited due to price correction in lending fees upon a change in share supply.

D. *Proxy Distribution Fees*

Market-determined reimbursement rates for proxy distribution are preferable to regulated rates. Shareowners both rely on and ultimately pay for the distribution of proxy information. Competition may allow a sustained or higher level of quality with potentially lower fees. However, attention should be paid to the ongoing quality of the distribution services to ensure that this essential function continues to be performed nearly flawlessly.

IV. Communications and Shareowner Participation

A. *Issuer Communications with Shareowners*

The communication process should be simplified and OBO/NOBO eliminated. Brokers and banks should be able to offer nominee accounts or other privacy arrangements at no additional cost to beneficial owners, and the costs of maintaining privacy should be no greater than those under the OBO/NOBO system. The more we unravel the overwhelming complexity in the ownership structure, the better it is for owners to have a clear idea of their holdings and to enable tracking or auditing of their votes.

As part of a transparent system, beneficial owners should receive very clear voting instruction or proxy cards. We caution the Commission to ensure that any changes to voting forms do not encourage more confusion and result in even lower participation from retail owners. Further, instead of informing owners of how their votes will be cast if they do not instruct all matters, uninstructed items should simply remain

uncounted.¹ Uninstructed items should never default to management-recommended votes at any level of vote processing.

B. *Means to Facilitate Retail Investor Participation*

The Commission should sanction the ability of retail shareowners to direct their proxy forms to third-party platforms, clarify the application of the proxy solicitation rules to intermediary participation, and encourage development of third-party voting platforms that include ordinary shareowners by including a reasonable, per-ballot fee in the proxy delivery fees paid by the issuer. With regard to owner-to-owner communication that may occur on these voting or other platforms, the rules that restrict electronic shareowner forums should be drastically shortened or eliminated.

The biggest hindrances to shareowner voting now are paucity of reliable information outside of the proxy statement, such as from other owners and institutions, and lack of automated voting platforms for retail owners. Third-party platforms funded by issuer-paid ballot fees would allow retail owners to create customized voting policies, set their votes according to specific company information within the proxy, or match ballots with other types of investors such as institutions or informed investors with whom they share sentiment, individually or in aggregate.² Such an account-based automated system could provide users with a confirmation email of their established selections in advance of each meeting so that changes can be made prior to the vote deadline and also reaffirm the general settings the investor has made for future instructions.

At least two entities have such retail voting platforms in development. There are economies of scale in developing these systems, and competition for fees will likely stoke innovation that will drive features and ease of use to attract retail investors. The voting platforms will likely be offered in conjunction with existing information, communication and other services offered by entities such as ProxyDemocracy, Moxy Vote, or Proxy Governance.

We believe these platforms are much preferable to a pre-marked proxy form paired with Advance Voting Instructions, which would limit investor consideration of the unique aspects at each issuer for similar types of proposals.

We encourage the Commission to shorten or fully eliminate the electronic shareholder forum rules to promote owner-to-owner communication around voting concerns. As issuers will hopefully find it easier and cheaper to communicate with owners concerning proxy matters, owners submitting shareowner proposals or director nominees on the corporate proxy may find themselves at a significant information-

¹ See comments on this Release by James McRitchie.

² ProxyDemocracy.org already collects and displays the intended votes from several large pension funds and other organizations.

sharing disadvantage. Electronic forums could serve to lessen the severity of this impact.

The proxy form should prominently list investor.gov as a resource, and a general statement on the consequence of not voting may be appropriate, but is dependent on available space. Brokers should also provide background information about proxy voting on their websites and link to the investor.gov site. We support the ability for investors to access proxy materials and a proxy voting form through their account page on the broker's website.

C. *Data-Tagging Proxy-Related Materials*

The Commission should require standardized N-PX formatting and data tagging of proxy information and fund voting. This will allow governance and owner-education focused groups such as ourselves to more cost-effectively access and distill the large volume of proxy and N-PX data, as well as provide context and concise information to investors who are seeking to make monitoring or investment decisions. It will have a significant impact on the quality and breadth of information that reaches the average investor.

We have co-sponsored a report for three years on executive compensation voting practices among 25 large mutual funds, along with AFSCME and The Corporate Library, and the data in the most recent report was provided by ProxyDemocracy.³ We know the difficulty that ProxyDemocracy faced in trying to assemble this data, beginning with the task of searching for and locating each specific fund filing within EDGAR, processing the N-PX files which appear in a number of different formats, and filtering the reports for similar proposals, a process complicated by differing numbering and naming conventions. The procedure requires a great deal of manual interfacing, and it is time consuming and may be prone to error. We know of no other publicly-available, in-depth reports on U.S. mutual fund voting, and only a handful of other for-profit companies have ventured into business models that accommodate the information in the N-PX reports. We believe the information contained in these reports can have a dramatic impact on shareowner value if it is shaped into usable form, and we are willing to expand our efforts in this area beyond executive compensation and beyond the 25 firms covered, as investors deserve, if the Commission can help make this information more accessible and less costly to process.

Currently, proxy advice is too expensive for all but deep-pocketed institutional investors; one reason for this is that proxy advisors must invest considerable resources to extract agenda information and link it to databases of director characteristics and proposal types. When proxy statements are provided in machine-readable formats, the

³ The most recent report can be viewed at http://www.afscme.org/docs/AFSCME-2009-Report_Compensation-Complicity.pdf

price of collecting and organizing that data should fall, making possible new sources of competition and better service in the market for proxy advice.

V. Relationship between Voting Power and Economic Interest

A. *Proxy Advisory Firms*

Since potential conflicts of interest exist for some advisors, the Commission should revise the rules to reinforce transparency and disclosure of conflicts of interest. The Commission should consider requiring the advisory firms to register as investment advisors or consider requiring filing of forms similar to Form NRSRO to describe conflicts and their management. We are not in favor of additional disclosure requirements to make advisors' executive compensation models or other criteria for decisions publicly available.

The perennial argument that proxy advisory firms are controlling or significantly influencing voting without oversight seems to contradict the reality that the investor or institution hiring the firm has true oversight. Their business model depends upon keeping clients happy with their services, and we find this motivation to be largely sufficient in keeping their recommendations in check.

Other concerns about the advice of the advisory firms, such as a one-size-fits-all approach are better addressed by the purchasers of such advice than regulatory action. It is our understanding that these firms work closely with their clients in setting the approach for making recommendations each year.

B. *Dual Record Dates*

To the extent that it is technologically possible and does not add confusion to the vote process, we support the implementation of dual record dates. The main attractive features are a closer overlap of the group of voters with investors on the actual meeting date and the fact that share recall from lending programs is unproblematic in such a system. If a dual record date system is adopted, the preferable notice format is the Delaware model, where focus is on the obligation to provide notice to owners as of the notice record date. For record dates very close to the actual meeting date, it is appropriate to expect that late purchasers will seek proxy information online rather than expect physical delivery.

C. *"Empty Voting" and Related "Decoupling" Issues*

At a minimum, there should be disclosure of the net economic interest within filings already required for large holders, such as in the Exchange Act Section 13(d). It is not possible with current information to answer many of the questions posed in the Release; therefore, we endorse a framework of extensive disclosure so that prevalence, format and complexity of decoupling issues are determined before adopting any specific set of neutralizing rules.

One countervailing mechanism is to ensure that shares can be recalled in a timely manner after the voting agenda is published. Unfortunately, there are many ways to decouple the economic exposure from the actual vote that do not involve the lending market.

VI. Issues not specifically addressed in the Release

A. Beneficial Ownership and Other Challenges for Shareholder Proposals

Rule 14a-8 enables owners to present proposals for inclusion in corporate proxy statements, and these proposals are important as a governance and engagement tool. We are aware of recent efforts by companies to raise technical objections to such proposals under state and federal law. We urge the Commission to be alert to the various forms of this problem and ensure that shareowner rights are not undermined by technical objections. Even large institutions such as CalPERS⁴ are not immune to this form of proxy intimidation.

With respect to the Release, it is particularly important for owners to establish a means by which they can clearly prove ownership, so as not to be subject to continued challenges under Rule 14a-8. We know of at least one case of a company threatening no-action requests and lawsuits to challenge the legality of a shareowner proposal over proof of beneficial ownership. We urge the Commission to look more closely at this issue to ensure that the mechanics of voting are in harmony with the ability of owners to properly present the matters for which a vote is needed.

B. "Dual" Proxy Card Voting in Proxy Contests

We urge the Commission to examine tabulation issues that have sometimes arisen in the case of proxy contests. Although the most recently dated card revokes an earlier card, in some cases company management has made exception to this and allowed shareowners to effectively cast votes supporting directors from both management and dissident proxy cards. Since shareowners make important decisions in proxy contests, it is of concern that the rules of voting and tabulation may change from contest to contest, sometimes change within just a few days of the meeting itself. Shareowners may be disenfranchised in contests where the tabulation procedure is modified with such little notice. We urge the Commission to examine the elections in which investors were able to select candidates from both proxy cards and consider whether additional rules are in order to ensure fair and proper elections.

⁴ See CalPERS letter to the Commission on this issue at: <http://www.calpers-governance.org/docs-sof/marketinitiatives/initiatives/seccorp-fin.pdf>



In closing, we also offer our support for the comments and areas of focus beyond those discussed in the Release that were offered in comments submitted by the International Corporate Governance Network (ICGN) and the Council of Institutional Investors (CII).

Thank you for inviting comment on this extensive review of the proxy voting system. We applaud your efforts to inform shareowners and ensure their votes are sought and counted. Please contact me at tracy@shareowners.org or (850)656-1599 if I can be of any assistance in your endeavor.

Sincerely,

Tracy Stewart,
Executive Director
Shareowner Education Network