

October 20, 2010

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

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

Dear Ms. Murphy:

Fidelity Investments<sup>1</sup> ("Fidelity") appreciates the opportunity to comment on the Securities and Exchange Commission's above-referenced Release on the U.S. proxy system. We recognize the significant work undertaken by the SEC staff in preparing the Release and applaud the Commission's effort to evaluate potential improvements to proxy tabulation, disclosure, solicitation, and distribution rules.

Fidelity is well positioned to comment on the Release. Through our management of the Fidelity funds, we have extensive experience in the U.S. proxy system from both an issuer and voter perspective. In addition, in our role as a large broker-dealer, we can also offer comments as a significant participant in the proxy distribution process. As the manager of the Fidelity funds, Fidelity takes seriously its responsibilities to manage the funds to advance the best interests of its shareholders. In our role as a broker-dealer, we believe that brokers play an integral role in the proxy distribution process and provide their investor clients with a consolidated and consistent source of information and support.<sup>2</sup>

Fidelity believes that the current U.S. proxy system, although complex, generally operates efficiently and reliably. Nevertheless, we believe the Commission's decision to issue the Release is appropriate, given the nearly 30 years that have passed since its last comprehensive review of the proxy voting infrastructure. While studying the proxy voting system, however, Fidelity urges the Commission to refrain from unnecessarily imposing uniform federal regulation on all market participants. Congress, through certain provisions of the recently enacted Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank")<sup>3</sup>

---

<sup>1</sup> Fidelity Investments is one of the world's largest providers of financial services, with assets under administration of nearly \$3.3 trillion, including managed assets of \$1.5 trillion. The firm is a leading provider of investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing and many other financial products and services to more than 20 million individuals and institutions, as well as through 5,000 financial intermediary firms.

<sup>2</sup> See SIFMA's Report on the Shareholder Communication Process with Street Name Holders, and the NOBO – OBO Mechanism (June 10, 2010) (the "SIFMA Report") at 11.

<sup>3</sup> See, e.g., Dodd-Frank, Section 951 (requiring that institutional investors report at least annually how they voted on any say on pay and say on golden parachute resolutions).

and the SEC, through the adoption of the recently stayed “Proxy Access” rules,<sup>4</sup> have shown an increased willingness to impose substantive law and regulation in areas that have traditionally been the province of state law. Fidelity believes that issuers and shareholders have benefited from corporate governance innovation that has resulted when ideas that originate at the state level flourish, and market participants can engage in private ordering.

Many of Fidelity’s comments below are made in the spirit of that tradition. In summary we believe that:

- The Release highlights the need for the Commission to propose voter-friendly rules that will facilitate greater participation in the proxy voting process. Specifically, we believe that the Commission can meet its longstanding goal of encouraging greater retail investor participation by (i) adopting rules permitting “client-directed” voting where shareholders may establish advanced voting instructions with brokers or other intermediaries and (ii) approving the inclusion of proxy cards or voter instruction forms (“VIFs”) with materials issuers initially provide under the “notice and access” regime.
- Fidelity believes the SEC should protect investors’ privacy interests and respect shareholder choice by continuing to allow shareholders to choose between OBO and NOBO status.
- Fidelity does not support data tagging requirements on proxy statements and voting information as it is not clear what additional benefits interactive data format would provide shareholders, particularly mutual fund shareholders.
- Fidelity would not object to the SEC’s reinforcing the rights of an issuer to provide advance notice of its meeting agenda if it so chooses.
- Mutual funds are unique among institutional investors in the wealth of proxy voting data they provide to the Commission and the investing public. Additional disclosure related to the number of securities voted would be of little, if any, value to investors and would not be worth the attendant cost.
- The SEC should be wary of imposing “one size fits all” regulatory regimes to address business matters that sometimes call for varying business solutions, particularly with respect to proxy vote reconciliation and vote confirmation.

---

<sup>4</sup> Facilitating Shareholder Director Nominations, Release Nos. 33-9136; 34-62764; IC-29384; File No. S7-10-09 (August 25, 2010) [17 FR 56668].

**I. Communications and Shareholder Participation**

**A. Advanced Voting Instructions/Notice and Access Process Improvements**

We believe that adopting advanced voting instructions and permitting the inclusion of proxy cards or VIFs as part of initial “notice and access” mailings would be effective initiatives that the SEC could pursue to improve proxy participation by retail shareholders. We strongly encourage the Commission to propose rules to enact each concept.

*1. Advanced Voting Instructions*

The Release contemplates that under advanced voting instructions, or client-directed voting rules, broker-dealers, proxy advisory firms or other third parties offering voting platforms would be permitted to obtain advance voting instructions from their shareholder customers. For example, beneficial owners could provide revocable standing instructions directing securities intermediaries to follow (or oppose) all board recommendations, follow the voting recommendation of a proxy advisory firm or vote in proportion to the securities intermediaries’ other customers.

Fidelity views client-directed voting as a cost-effective boost to shareholder participation. Shareholders would benefit from a user-friendly tool that would facilitate voting, while issuers would see reduced burdens in reaching quorum, including the frequency of costly proxy solicitations.

We recognize the concerns expressed in the Release that advance voting instructions given by an investor at the time he or she opens a brokerage account<sup>5</sup> could act as a disincentive for retail investors to review proxy materials covered by an advanced voting instruction. However, we believe that increased voting resulting from such a practice would outweigh these potential detriments. Fidelity applauds the Commission’s ongoing efforts to foster an environment of well informed proxy voters, but also recognizes that some shareholders follow the “Wall Street Rule” -- in other words, a decision to invest in a company is tantamount to a vote for management. These shareholders believe that the appropriate way to deal with dissatisfaction with management or a company board is to simply dispose of the stock, rather than try to change that company’s policies. We believe that client-directed voting may actually enhance shareholder participation by allowing a shareholder to express a view once, instead of year-after-year having to reaffirm his or her approach to a particular company’s proxy matters.

---

<sup>5</sup> We believe the Commission should make it clear that investors may provide these voting instructions at the time they open an account with any financial intermediary or directly with a mutual fund.

Of course, Fidelity understands the Commission's concerns about shareholders' attention to proxy voting matters after an advanced voting instruction is elected. For that reason, we support establishing reasonable safeguards that permit shareholders to re-affirm instructions on a regular basis and revoke instructions at any time.

## 2. *Notice and Access Process Improvements*

In 2005, the Commission's notice and access proposing release included provisions permitting issuers to include proxy cards or VIFs along with the notice of Internet availability of proxy materials ("Internet Notice").<sup>6</sup> At the time, many market participants applauded this aspect of the Commission's proposal. Regrettably, between the issuance of the proposed rules and their adoption, the Commission was persuaded by commenters who suggested that separating the proxy card from the proxy statement could "lead to the type of uninformed voting that the proxy rules are intended to prevent" and that "issuers may attempt to structure their solicitations in a manner that discourages access to the proxy statement."<sup>7</sup> Although the Commission noted that other commenters did not believe that separating the proxy card from the proxy statement would cause these problems, the SEC nevertheless chose to prohibit issuers from including the proxy card with the Internet Notice without further explanation.

Fidelity believes that the Commission's first instincts were correct, and we urge the Commission to adopt rules permitting the inclusion of proxy cards/VIFs with Internet Notices, as originally proposed in the notice and access release.

Many Fidelity fund shareholders have expressed frustration about the absence of voting materials (such as the proxy card and the number to vote by telephone) included with the Internet Notice, and Fidelity occasionally receives communications from shareholders who try to convert the Internet Notice into a proxy card. Permitting the inclusion of the proxy card with the Internet Notice would eliminate the need to make a separate mailing, which would reduce costs for issuers and eliminate confusion among shareholders.

---

<sup>6</sup> Internet Availability of Proxy Materials; Release Nos. 34-52926; IC-27182; File Nos. S7-10-05 (December 8, 2005).

<sup>7</sup> 17 CFR 240.14a-16; Internet Availability of Proxy Materials, Release Nos. 34-55146; IC-27671; File No. S7-10-05 (January 22, 2007) [72 FR 4148] at 24.

B. OBO/NOBO

The Commission seeks comment on whether the SEC should revise its rules to improve shareholder communications and encourage greater shareholder participation. The Commission noted concerns expressed by issuers that the “objecting beneficial owner” (“OBO”) status in which the majority of street name securities are held makes it difficult for issuers to determine the identity and holdings of their investors. In addressing the issue, the SEC referred to a 2004 Business Roundtable rulemaking petition recommending that the Commission enable issuers to communicate directly with beneficial owners by requiring broker-dealers and banks to execute an omnibus proxy in favor of their underlying beneficial owners and by eliminating the ability of beneficial owners to object to the disclosure of their identities to issuers. The argument is that eliminating the OBO/NOBO (“Non-Objecting Beneficial Owner”) distinction would create a more efficient proxy system whereby issuers would be able to bypass securities intermediaries and their agents.

As a broker, Fidelity believes that clients who have elected OBO status would prefer not to have their brokers be forced to disclose their personal information. We appreciate the privacy concerns of shareholders who elect such a designation and believe that many OBO clients would strongly object to eliminating the option. On Fidelity’s clearing brokerage platform, more than 80% of total accounts (consisting of retail and institutional accounts) are classified as NOBO. The remaining accounts, which have elected OBO status, are largely institutional.

The Fidelity funds similarly have opted for OBO status. Fidelity, like many other institutional investors, goes to great lengths to limit “information leakage” to the street, whether that information involves the manner in which it places fund trades or current fund holdings data. Adopting OBO status is one of the tools Fidelity uses to protect its funds’ proprietary information.

Like that of other mutual funds, Fidelity’s ownership in portfolio securities is hardly a secret. The current regulatory reporting regime provides issuers ample opportunity to discern the Fidelity funds’ ownership levels of their securities. The Fidelity funds, like all mutual funds, disclose portfolio holdings on a quarterly basis on Forms N-Q and N-CSR, and institutional investors like Fidelity are required to file Schedules 13F and 13G on a regular basis.

The Fidelity funds, of course, are also issuers of securities. Therefore, Fidelity in general supports a system that improves investor participation and facilitates issuers’ ability to reach quorum. The Fidelity funds often face challenges when trying to reach quorum for fund shareholder meetings. Sometimes funds must undertake additional solicitation efforts, which can include multiple mailings and phone calls to NOBO shareholders. While eliminating OBO status might allow Fidelity to engage in more

effective solicitation efforts (for example, phone efforts might be targeted at larger shareholders within the OBO population if that shareholder information were available), we expect that intermediaries would be unwilling to provide full contact information (i.e., addresses and phone numbers) for shareholders. As a result, access to OBO databases may be of limited use. Given the foregoing, and the potential harm that the dissemination of proprietary information could cause the Fidelity funds, Fidelity believes that the SEC should leave undisturbed the privacy rights of shareholders who elect OBO status.<sup>8</sup>

### C. Data-Tagging Proxy-Related Materials

The Commission seeks comment on whether it would be beneficial to investors to permit or require issuers to provide proxy statement and voting information in interactive data format. We believe not.

The Commission suggests that “shareholders may be able to more easily obtain specific information about issuers, compare information across different issuers, and observe how issuer-specific information changes over time as the same issuer continues to file in an interactive data format.”<sup>9</sup> However, mutual fund proxy statements contain extensive narrative information, and tagging that type of information would not only be quite a time-consuming and expensive undertaking, we are very skeptical that any shareholder would care to compare this information across proxy statements in the first place. We also do not see any utility in tagging Form N-PX. Not only are service providers already equipped with systems to gather and sort Form N-PX data, the Release itself rightly queries whether it is even feasible to tag Form N-PX in a manner that provides for uniform identification of each matter voted.<sup>10</sup>

Finally, we believe that it is premature to consider expanding mutual funds’ data tagging activities. The Commission’s recent initiative to require funds to comply with data tagging for registration statements, which takes effect next year, may give the Commission valuable insight into who actually uses the tagged data. The Commission should wait to see how much shareholders use and benefit from data tagging of prospectuses before extending the requirement to other filings.

---

<sup>8</sup> In addition, Fidelity does not see the value in the Release’s OBO/NOBO alternative whereby investors wishing to maintain OBO-like status could appoint a nominee to serve as an issuer contact. Because there is no significant difference between that option and the current OBO/NOBO model, we would oppose the nominee option on the grounds that the required systems changes would impose needless costs on market participants.

<sup>9</sup> See Release at 99.

<sup>10</sup> *Id.* at 103.

D. Investor Education

Fidelity strongly supports investor education and enhancements to issuers' and/or broker-dealers' website platforms. We believe that enhanced broker and issuer websites coupled with broker-dealers' existing proxy voting support can lead to more informed voting decisions. Further, we believe such action, along with initiatives like advance voting instructions, and including proxy cards in Internet Notice mailings, would enhance voter participation. Fidelity believes that all participants in the proxy voting process (i.e., issuers, securities intermediaries, etc.) share responsibility for educating investors and improving the educational materials and tools available to investors.

II. Accuracy, Transparency, and Efficiency of the Voting Process

A. Advance Notice of Meeting Agenda

The Commission seeks comment on whether issuers should be required to disclose meeting agenda items sufficiently in advance of the record date to permit securities lenders to determine whether any of the matters warrant recall.

As a general rule, Fidelity believes that more information in the marketplace is desirable, and advance notice could prove helpful to securities lenders as they evaluate the information to determine whether to recall securities. Fidelity therefore would not object if the SEC proposed rules that would permit, but not require, issuers to provide advance notice of agenda items. We also note that issuers have the option of providing advanced notice under existing laws, so SEC rules may not be necessary in this area. However, before proposing any such rules the Commission should consider the costs associated with lenders' reviews of advance notices, including costs required for additional staffing and systems upgrades to handle the increase in matters to be considered.

The Commission also expresses concern about the potential for the proxy system's susceptibility to "empty voting," which occurs when a shareholder's voting rights exceeds its economic interest in the same security. The SEC should be mindful that advance notices could have the unintended effect of tipping off individuals who may attempt to exploit the newly available information to the detriment of other investors.

B. Disclosure of Total Votes Cast

The Commission seeks comment on whether increased disclosure of votes cast by institutional securities lenders might improve the transparency of the voting process. While Fidelity supports transparency, we do not believe that the proposed additional disclosure would prove meaningful or helpful to shareholders.

The Fidelity funds vote on proposals presented at shareholder meetings in accordance with the funds' Board-established proxy voting guidelines. These guidelines are publicly available on Fidelity's website. In addition, Fidelity discloses annually how each fund voted on each proposal on Form N-PX.

Fidelity believes that the current Form N-PX and related disclosure of the Fidelity funds' proxy voting guidelines provides shareholders with ample information regarding the Fidelity funds' voting policy and voting activity. As a result, we do not see any benefit to shareholders from requiring disclosure of the actual number of shares a fund voted on each proposal or the number of shares for which a fund did not vote proxies because the shares were on loan or for other reasons.

#### C. Proxy Voting – Reconciliation

The Release seeks comment on whether any particular type of vote allocation and reconciliation method better protects investor interests in identifying and eliminating over-voting. Fidelity is not aware of any empirical data that indicates that over-voting is a significant industry issue. Although the Commission may be aware that occasional instances of over-voting have occurred, in light of the limited record, we submit that any such instances should not be portrayed as a systematic failure.

We believe that the better approach to the potential issue of over-voting would be to require brokers to disclose to customers their reconciliation methods and to allow brokers to retain the flexibility to select the allocation and reconciliation method that best suits their business model and customer base. As the Release notes, broker-dealers have adopted varying reconciliation models appropriate for their respective customer bases. In a continually evolving financial services marketplace, a single SEC-mandated approach that seems appropriate today could quickly become outdated as market practices and technologies evolve.

#### D. Vote Confirmation

The Release asks whether all participants in the voting chain should grant access to their voting records for the limited purpose of enabling confirmation of a shareholder's vote. It also points out a perceived unwillingness or inability of participants in the proxy process to share voting information. Fidelity supports efforts to increase cooperation among all participants in the proxy process, including tabulators and other proxy intermediaries, in order to provide vote confirmations to investors who request them. We are concerned, however, that a requirement that imposes significant systemic changes – such as requiring that a code be attached to shares for voting purposes that would identify specific beneficial owner information – would be difficult and expensive for the industry to implement and may result in confusion and processing delays for investors.

Ms. Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
October 20, 2010  
Page 9 of 9

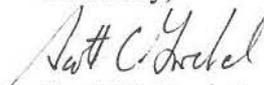
We strongly urge the Commission to be mindful of the substantial costs and burdens that any effort to revamp the confirmation system would impose on issuers. Although ultimately it may prove feasible to engage proxy service providers to confirm receipt and processing of proxy votes, we anticipate that these services could be quite expensive, particularly given the limited number of service providers available in this area.

If the Commission nevertheless proposes a requirement on registrants to confirm proxy votes, Fidelity believes that only record and beneficial owners should be able to request such confirmation, and only with respect to their own shares. There should also be a time limit on such requests (preferably within 30 days after the date of the shareholder meeting), because requiring confirmations years after a meeting is held could impose additional costs on issuers. Moreover, allowing third parties to request this information, or allowing shareholders to request access to complete voting records, would impose significant administrative burdens, increase costs on issuers and raise privacy and other information security concerns.

\* \* \* \*

We appreciate the opportunity to comment on the Release. Fidelity would be pleased to provide any further information or respond to any questions that the Commission or the staff may have.

Sincerely,



Scott C. Goebel

cc: The Honorable Mary L. Schapiro, Chairman  
The Honorable Kathleen L. Casey, Commissioner  
The Honorable Elisse B. Walter, Commissioner  
The Honorable Luis A. Aguilar, Commissioner  
The Honorable Troy A. Paredes, Commissioner

Andrew J. Donohue, Director, Division of Investment Management