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

VIA ELECTRONIC MAIL

Subject: Concept Release on the U.S. Proxy System, File No. S7-14-10

Dear Ms. Murphy:

The Shareholder Communications Coalition ("Coalition") appreciates the opportunity to comment on the Concept Release by the Securities and Exchange Commission ("SEC") regarding the U.S. proxy system.

The SEC has developed a very comprehensive and thoughtful explanation of this complex and inter-connected system for proxy voting and communications. The SEC also has requested public comment on a number of very realistic and cost-effective potential regulatory responses to reform the system.

The Coalition supports the need for fundamental reforms, as stated in the Concept Release's Introduction:

> Accordingly, in this release, we are reviewing and seeking public comment as to whether the U.S. proxy system as a whole operates with the accuracy, reliability, transparency, accountability, and integrity that shareholders should rightfully expect. With over 600 billion shares voted each year at more than 13,000 shareholder meetings, shareholders should be served by a well-functioning proxy system that promotes efficient and accurate voting. Moreover, recent developments, such as the revisions to Rule 452 of the New York Stock Exchange ('NYSE') limiting the ability of brokers to vote uninstructed shares in uncontested director elections and other corporate governance trends such as increased adoption of a majority voting standard for the election of directors have highlighted the importance of accuracy and accountability in the voting process.[1]

[1] Concept Release on the U.S. Proxy System, Release Nos. 34-62495; IA-3052; IC-29340, 75 Fed. Reg. 42,982, at 42,983 (July 22, 2010) (hereinafter "Concept Release").

The structure of the current proxy processing system has been in place since 1985—more than 25 years—and has been a source of frustration for most of that period. And, for many years after the rules were put in place, there was no real catalyst to change the structure of the system, despite concerns raised by issuers and other stakeholders. Then, starting in the late 1980's, significant advances in the back office technologies used within the securities industry occurred, followed by exponential changes in communications technologies and in the growth of the Internet. These technological and communications advances were then followed by several large upheavals in the capital markets, which have, over the past ten years, helped to spark a number of new and evolving standards in the corporate governance arena—both inside and outside of Washington.

All of these technological advances and corporate governance developments together have significantly increased the need for public companies to know who their shareholders are and be able to engage in direct communications with them. Similarly, the corporate governance system in the U.S. is now demanding a proxy voting system that is accurate, verifiable, and auditable, starting with the development of an eligible voter list and ending with the ability of a third-party to be able to review and verify the results in a close contest.

What follows are the Coalition's comments on several of the more significant issues discussed in the Concept Release, organized in the same manner as the SEC's Release.

I. Accuracy, Transparency and Efficiency of the Voting Process

A. Over-Voting and Under-Voting: The Need for an Eligible Voter List

As noted in the Concept Release, broker-dealers and banks hold many of their securities in book-entry form through the Depository Trust Company ("DTC"), a registered clearing agency acting as a securities depository. These securities are held in "fungible bulk," meaning that there are no specifically identifiable shares directly owned by each broker-dealer or bank participating in this system.

The Concept Release documents several circumstances in which there can exist an imbalance in broker voting, typically caused by: (1) a failure to deliver securities by settlement date, and/or (2) securities lending transactions.

A failure to deliver securities problem can arise through the mechanics of the clearance and settlement system. A good description of the problem was presented in a 2007 SEC Staff Briefing on Proxy Voting Mechanics:

> When a customer buys a security, the broker-dealer typically credits the customer's account with the security on the settlement date. However, if another broker-dealer has failed to deliver that security to the clearance and settlement system, the broker-dealer may not have received those securities in its account at DTC. Unless the broker-dealer reconciles the imbalance in some manner, the broker-dealer may over-vote.
>
> Securities transactions in the U.S. are generally cleared and settled on a net basis at the National Securities Clearing Corporation (NSCC) and held in fungible bulk at DTC. While delivery of securities to NSCC usually occurs as expected, there are times when broker-dealers will fail to deliver securities on a timely basis. This can occur for a variety of reasons, including events that are out of the broker-dealer's control, such as delays in obtaining transfer of title, the inability to borrow securities in time for settlement, or the failure to receive securities.
>
> In the course of netting securities, NSCC replaces the original parties to a transaction, which frees it from tracking these original counterparties. If a seller does not deliver the securities owed, NSCC will allocate the resulting failure to receive among the broker-dealers holding the security at NSCC, not necessarily to the original counterparty. As a result, the broker-dealer that has the failure allocated to it may not have as many shares in its NSCC account as customers with an interest in the securities.[2]

An imbalance in broker voting can also occur through share lending transactions. As a result of holding shares in fungible bulk, broker-dealers do not routinely match loaned shares to specific customer accounts. An inability to match long positions with share lending positions can result in an inaccurate number of equity shares that are entitled to vote when a corporate record date is established.

When shares are lent out by broker-dealers, both long positions and share lending positions of the same security may receive proxy materials, including a Voting Instruction Form ("VIF"), for the same shareholder meeting.[3] Similarly, proxy materials

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[2] SEC Staff Briefing: Roundtable on Proxy Mechanics, May 24, 2007, at 1-2, available at http://www.sec.gov/spotlight/proxyprocess/proxyvotingbrief.htm.

[3] Under the street name system, beneficial owners do not receive proxy cards to cast their votes in a shareholder meeting. Instead, beneficial owners receive a voting instruction form ("VIF") that is to be used by them to indicate their voting preferences. The use of a VIF is necessary because broker-dealers and banks retain the authority to cast the actual votes and do not transfer their proxy authority to the beneficial owner level.

may be transmitted to customer positions which have not been received by the broker-dealer as of a record date because of a failure to deliver the securities involved.

If some or all of these share positions receive proxy materials and return voting instructions, then a broker-dealer may be submitting more votes to an issuer than it is entitled to vote. Further, and equally as important, this process permits proxy materials and VIFs to be sent to shareholders who are not legally eligible to vote, as a result of share lending transactions and failure to deliver problems at the customer account level.

This problem of ineligible shareholders receiving VIFs has been an issue for a number of years. In 2005, one of the Coalition's member associations—The Securities Transfer Association ("STA")—reviewed 341 shareholder votes in corporate contests for that year, and found evidence of over-voting in all 341 shareholder votes.[4]

In 2006, the New York Stock Exchange ("NYSE") sanctioned four broker-dealers for failing to reconcile their beneficial ownership positions to avoid over-voting. In a series of administrative decisions, the NYSE determined that a lack of timely reconciliation caused customers who were ineligible to vote to receive voting instruction forms.[5]

In the first of these administrative decisions, In the Matter of Deutsche Bank Securities, Inc., the NYSE Board of Directors—which issued the decision—explained the over-voting problem as follows:

> For each proxy solicitation, the Tabulator compares the proxy votes submitted on behalf of the member organization and/or its customers with the number of shares reflected on the records of the Depository Trust and Clearing Corporation ('DTCC') for the member organization on the applicable record date. The number of shares showing on the records of DTCC for the member organization, with certain adjustments, is the maximum number of shares (votes) that will be tallied by the Tabulator in determining the outcome of the proxy vote. If a member organization submits to the Tabulator more

[4] See Bob Drummond, "Corporate Voting Charade," Bloomberg Markets, April 2006, available at http://www.shareholdercoalition.com/BloombergMarketsApril2006.pdf. See also The Securities Transfer Association, "Street Proxy Tabulation Results," STA Newsletter, Issue 4, 2005, at 1 (available from The Securities Transfer Association).

[5] See In the Matter of Deutsche Bank Securities, Inc., New York Stock Exchange, Inc. Request for Review of Exchange Hearing Panel Decision 05-45, NYSE Board of Directors, Feb. 2, 2006, available at http://www.nyse.com/pdfs/05-045.pdf; Credit Suisse Securities (USA) LLC, New York Stock Exchange Hearing Panel Decision 06-54, Apr. 18, 2006, available at http://www.shareholdercoalition.com/06-054_CreditSuisse.pdf; UBS Securities LLC, New York Stock Exchange Hearing Panel Decision 06-55, Apr. 18, 2006, available at http://www.shareholdercoalition.com/06-055_UBS.pdf; Goldman Sachs Execution & Clearing, L.P., New York Stock Exchange Hearing Board Decision 06-61, May 4, 2006, available at http://www.shareholdercoalition.com/06-061_GoldmanSachs.pdf.

> shares than are shown for the member organization on the records of DTCC, then an 'over-vote' results.[6]

As the SEC's Concept Release states, the securities industry has implemented systems to compare the aggregate number of votes submitted by a securities intermediary to its ownership positions, as reflected by DTC's records, notifying the securities intermediary when it has submitted votes in excess of its ownership position.[7] However, these systems are not preventing ineligible shareholders from receiving proxy materials and VIFs. The reason is that current rules do not require reconciliation of broker vote imbalances at the customer account level prior to a distribution of proxy materials.

This reconciliation timing problem was also addressed by the NYSE in the three administrative decisions which followed the Deutsche Bank opinion noted above, each of which included a similar explanation of the importance of having a timely reconciliation of beneficial owner positions, in order to avoid sending out requests for proxy voting instructions to investors who are not entitled to vote:

> Failure to timely reconcile stock records on beneficial ownership may result in inaccurate instructions being given to the proxy service provider. If there is no reconciliation of stock records of beneficial ownership, customer votes may be allocated inaccurately, because customers with long and short positions in the same stock may receive requests for proxy voting instructions for too many shares. Similarly, if stock in margin accounts has been used for stock loans, and both the margin account holder or holders and the recipient of the stock loan submit voting instructions for the same stock, then the margin account holder may submit a proxy for shares of which he is at that time not the beneficial owner, and for which he is not entitled to submit a proxy. Failure to perform proper reconciliations may allocate more votes, and in some instances fewer votes, to customers than is proper.[8]

After these NYSE administrative proceedings were completed, the securities industry adopted written guidelines to address this reconciliation problem.[9] These guidelines permitted broker-dealers to select one of two reconciliation methods. Under

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[6] In the Matter of Deutsche Bank Securities, Inc., New York Stock Exchange, Inc. Request for Review of Exchange Hearing Panel 05-45, NYSE Board of Directors, Feb. 2, 2006, at 3, available at http://www.nyse.com/pdfs/05-045.pdf.

[7] Concept Release at 42,989. See also Letter from Charles V. Callan, Senior Vice President – Regulatory Affairs, Broadridge Financial Solutions, Inc., to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, SEC File No. S7-14-10, Oct. 6, 2010, at footnote 8, available at http://www.sec.gov/comments/s7-14-10/s71410-62.pdf.

[8] Goldman Sachs Execution & Clearing, L.P., NYSE Hearing Board Decision 06-61, May 4, 2006, at 5, available at http://www.shareholdercoalition.com/06-061_GoldmanSachs.pdf.

[9] Securities Industry Association, Suggested Practice Guidelines for Proxy Processing, Sept. 2006, available at http://www.shareholdercoalition.com/SIASuggestedPracticesforProxyProcessing906.pdf.

the first method, called pre-mailing reconciliation, a broker-dealer reconciles its long positions with its share lending positions (and failure to deliver positions) before a proxy mailing takes place, so that proxy materials and VIFs are only sent to customer positions authorized to vote in a shareholder meeting.

Under the second method, called post-mailing reconciliation, a broker-dealer compares its aggregate position at DTC (and elsewhere) with its actual aggregate customer account position only after receiving VIFs back from its customers and during the vote tabulation process. As stated in the Concept Release:

> Broker-dealers using the post-reconciliation method request voting instructions from their customers with respect to all shares credited to their customer accounts, including for those shares that may have been purchased on margin, loaned to another entity, or not received because of a fail to deliver. ... In the event that a broker-dealer receives voting instructions from its customers in excess of its aggregate securities position, the broker-dealer adjusts its vote count prior to casting its vote with the issuer. The manner in which the adjustment is made varies among broker-dealers. Some firms simply reduce the number of proprietary position votes cast. Others allocate fewer votes to customers with securities purchased on margin or on loan.[10]

From the perspective of an individual investor, the pre-mailing reconciliation method ensures that only those shareholders who are legally eligible to vote in a shareholder meeting are the ones actually voting. Post-mailing reconciliation is an after the fact remedy that permits generally low response rates by individual investors in proxy voting to obscure share lending positions and failure to deliver problems within each broker-dealer's aggregate share position at DTC.

If more voting instructions are returned than are in a broker-dealer's aggregate position, then some customer votes are not going to be counted. If fewer votes are returned than are in a broker-dealer's aggregate position, then some of the votes are from customers who are ineligible to vote, as proxy materials and VIFs have been sent to a broader list of shareholders than those who are legally entitled to vote, as of the record date.

Without a reconciliation process that takes place before a proxy mailing takes place, certain shareholders may be disenfranchised by the allocation decisions made by a broker-dealer when it needs to adjust the number of customer votes cast down to the level of shares in its aggregate DTC position.

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[10] Concept Release at 42,991.

Fortunately, the pre-mailing reconciliation method is not a challenge to implement operationally. According to a leading proxy service provider, broker-dealers have the capability to reconcile beneficial owner positions in this manner today, without difficulty.[11] It is also the Coalition's understanding that a number of large broker-dealers, including several of the firms subject to the NYSE sanctions in 2006, are already reconciling long positions with share lending positions before a proxy mailing is sent.[12]

The securities industry guidelines that provide two different methods of beneficial owner reconciliation—pre-mailing and post-mailing—should be replaced with an SEC regulatory provision that requires pre-mailing reconciliation as the only method for broker-dealers. Broker-dealers should be required to reconcile their share positions as of the record date for each shareholder meeting, in order to avoid distributing proxy materials and VIFs (or proxy cards) to ineligible shareholders and to avoid discrepancies in tabulating final vote counts.[13]

The use of pre-mailing reconciliation will make the proxy voting process more fully transparent and verifiable, by requiring the compilation of a reconciled list of beneficial owners eligible to vote before proxy materials are distributed and votes are cast.

B. Vote Confirmation: The Need for a More Transparent Proxy Voting Process

The Coalition supports efforts by institutional investors and other participants in the proxy voting process to establish a process by which investors can confirm that their votes have been cast properly.[14] As noted in the Concept Release, this confirmation issue is a problem primarily because "no one individual participant in the voting process ... possesses all of the information necessary to confirm whether a particular beneficial owner's vote has been timely received and accurately recorded."[15] One aspect of the problem is a result of the fact that beneficial owner voting instructions and registered shareholder proxies are tabulated separately.

The Coalition believes that the best solution to this problem is to make the proxy voting process as transparent to all parties as is possible. As discussed earlier, the

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[11] Broadridge Financial Solutions, Inc., PowerPoint Presentation: An Overview of US Proxy Processing and Securities Lending, December 2009, at 32 (on file with the Coalition) ("Shares held through brokers are treated as a 'fungible mass' but all shares can be reconciled to an individual account when necessary").
[12] Telephone interview with Beverly O'Toole, Managing Director and Associate General Counsel, and Dane Holmes, Managing Director - Investor Relations, Goldman, Sachs & Co., Sept. 3, 2009.
[13] This reconciliation process should include both share lending positions and failure to deliver positions.
[14] See Alan L. Beller and Janet L. Fisher, The OBO/NOBO Distinction in Beneficial Ownership: Implications for Shareowner Communications and Voting, February 2010, available at http://www.cii.org/UserFiles/file/CII%20White%20Paper%20-%20The%20OBO-NOBO%20Distinction%20in%20Beneficial%20Ownership%20February%202010.pdf (hereinafter "CII Study").
[15] Concept Release at 42,992.

process should start with each broker-dealer compiling a list of beneficial owner positions legally eligible to vote—as of a record date—through an internal reconciliation of long positions with share lending positions and failure to deliver positions at the customer account level.

A second step to improve transparency in the proxy voting process would be to provide beneficial owners with proxy voting authority through the use of the omnibus proxy process, as discussed later in this comment letter.[16] And a third step to improve the functioning of the proxy system would be to permit issuers to solicit proxy cards directly from beneficial owners and tabulate votes from these owners with only a single tabulator, who can then verify that an investor's votes were recorded and counted properly.

This type of transparent voting process also will permit vote counts to be auditable and capable of third-party verification, so that a validation of the final tabulation of the votes of both beneficial and registered owners can occur.

C. Proxy Distribution Fees: The Need for Structural Reform of the Proxy Distribution Process

As noted in the Concept Release, SEC rules place control of proxy distribution and communications involving beneficial owners with broker-dealers and banks.[17] As a result of these rules, and the framework which has developed to implement these rules, issuers do not choose which proxy service providers they may use to distribute proxy materials to beneficial owners and, subsequently, to communicate with these owners. The compilation of the list of beneficial owners for a shareholder meeting, the distribution of proxy materials to these owners, and any related communications about proxy matters with these owners are all bundled together and handled through one service provider, which then invoices each issuer for the services provided, pursuant to fees that are approved by the NYSE.

1. SEC Views on Market-Based Alternatives to the Current System

For more than a decade, the SEC consistently has expressed an interest in market-based alternatives to the current system of establishing regulated fees for beneficial owner proxy services. In 1997, as the SEC was approving a proposed NYSE pilot program for the reimbursement of proxy processing expenses by issuers, it expressed its view that market competition should eventually replace the current regulatory structure:

> The pilot period and independent audit should help the Commission assess whether the potential benefits of the fee structure change do,

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[16] The Coalition believes that the ProxyEdge service used by many institutional investors to cast their votes in a shareholder meeting should not be changed by any of these proxy voting recommendations.
[17] See Concept Release at 42,995.

> in fact, have a positive effect overall on the proxy fee reimbursement structure. Indeed, during this period, the Commission encourages the Exchange, issuers, and member firms to consider a long term solution to determining reasonable expenses in connection with broker-dealers' mailing of proxy soliciting materials and annual reports to beneficial holders. In doing so, the Commission notes that in adopting the direct shareholder communications rules in the early 1980s the Commission left the determination of reasonable costs to the [Self-Regulatory Organizations (SROs)], because they were deemed to be in the best position to make fair evaluation and allocations of costs associated with these rules. *The Commission believes that ultimately market competition should determine 'reasonable expenses' and recommends that issuers, broker-dealers and the NYSE develop an approach that may foster competition in this area. Rather than having the rates of reimbursement set by the SROs, the Commission suggests that the NYSE and other SROs explore whether reimbursement can be set by market forces, and whether this would provide a more efficient, competitive, and fair process than SRO standards.*[18] (emphasis added)

In 1999, the SEC repeated its goal of replacing the current system with a market-based structure:

> In general, the Commission believes that free market forces, rather than governmental or quasi-governmental authorities, should determine what fees are reasonable for the services provided, especially during this age of rapid technological developments that facilitate the electronic delivery of proxy materials. The Commission is concerned that there are risks attendant to a single proxy distribution intermediary controlling such a high percentage of shareholder material distribution. Moreover, because of the operation of the Commission's proxy rules, issuers cannot themselves distribute proxy materials to street name shareholders or hire their own agents to do so, but instead must reimburse broker-dealers for the reasonable expenses incurred in distributing shareholder materials. Under these rules and industry practice, issuers have no role in determining whether the broker-dealers outsource their proxy distribution function, and if so, which agents they choose. Thus, issuers are unable to bargain for rates commensurate with their size or shareholder profile. Therefore, the Commission in the future will consider ways to increase competition

[18] Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change Relating to a One-Year Pilot Program for Transmission of Proxy and Other Shareholder Communications, Exchange Act Release No. 34-38406, 62 Fed. Reg. 13,922, at 13, 930 (Mar. 24, 1997).

> in this area, including whether it would be appropriate to remove itself and the [Self-Regulatory Organizations] from the rate-setting process.[19]

The SEC repeated its long-term goal of encouraging market-based solutions to proxy processing costs in 2002, as it was approving the NYSE pilot program referred to above on a permanent basis:

> During the course of the Pilot Program, the Commission has consistently encouraged the Exchange, issuers, and member firms to consider long-term solutions and to develop an approach that would foster competition so that market forces can determine reasonable rates of reimbursement rather than the NYSE Rules and guidelines. While the Commission today has determined to approve the Pilot Program on a permanent basis, the Commission continues to believe that ultimately market competition should determine reasonable rates and expects the NYSE to continue its ongoing review of the proxy fee process, including considering alternatives to [Self-Regulatory Organization (SRO)] standards that would provide a more efficient, competitive, and fair process.... The Commission believes that permanent approval of the current proxy fee structure will permit the NYSE and other interested parties to focus on a long-term solution that would allow market forces rather than SRO rules to set rates.[20]

Later in the Order, the Commission added:

> In summary, while the Commission has decided to approve the revised proxy fees under the Pilot Program on a permanent basis, the Commission stresses that permanent approval does not end the discussion of proxy fee reform. The main goal is to assure protection of shareholder voting rights in a competitive marketplace for proxy distribution, where market forces operate freely to set competitive and reasonable rates. The Commission urges the NYSE ... to identify ways to achieve these goals.[21]

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[19] Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change Relating to the Reimbursement of Member Organizations for Costs Incurred in the Transmission of Proxy and Other Shareholder Communication Material, Exchange Act Release No. 34-41177, 64 Fed. Reg. 14,294, at 14, 299 (Mar. 24, 1999).

[20] Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Amending Its Rules Regarding the Transmission of Proxy and Other Shareholder Communication Material and the Proxy Reimbursement Guidelines Set Forth In Those Rules, and Requesting Permanent Approval of the Amended Proxy Reimbursement Guidelines, Exchange Act Release No. 45644, 67 Fed. Reg. 15,440, at 15,443-15,444 (Apr. 1, 2002).

[21] Id. at 15,444.

Four years later, in a 2006 report, the NYSE Proxy Working Group recommended that the NYSE consider commissioning a study to develop a plan to transition the current proxy processing system into a free market model:

> The [NYSE Proxy] Working Group believes that while the current regulated system is generally effective, the NYSE should continue to explore alternative systems, along with the SEC, such that a competitive system, with fees set by the free market, could eventually succeed the current system.
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> Therefore, the Proxy Working Group recommends that the NYSE consider commissioning a study to review (i) the entire shareholder communications and proxy voting system and recommend a plan to evolve the current system into a free market model with competitors to ADP and unregulated fees and (ii) the effect of eliminating Rule 465 under the current system and allowing individual issuers to negotiate reimbursement fees with banks and brokers for delivery of shareholder communications to beneficial owners.[22]

Despite this interest by the SEC (and within the NYSE) to examine market-based alternatives to the current regulatory system, there has been very little activity to develop any specific alternative permitting fees to be established through free market competition and providing issuers with a choice in selecting among different providers for proxy services.

2. <u>The Coalition's Views on Market-Based Alternatives to Regulated Proxy Fees</u>

For the last five years, the Coalition has advocated that the proxy processing system be reformed to take advantage of technological advances—especially in electronic communications—and that issuers should be permitted to choose their own service providers, under a proxy system in which there are fewer securities intermediaries in between an issuer and its beneficial owners.

In correspondence with the SEC and the NYSE Proxy Working Group in 2005 and 2006, the Coalition recommended that the proxy processing framework be changed to reflect the following principles:

- The shareholder communications system should take advantage of technological advances, including electronic mail, that make more efficient means of communicating with beneficial owners possible.

[22] Report and Recommendations of the Proxy Working Group to the New York Stock Exchange, June 5, 2006, at 29, available at http://www.nyse.com/pdfs/PWG_REPORT.pdf (hereinafter "NYSE Proxy Working Group Report"). Broadridge Financial Solutions, Inc. is the successor to a division of ADP that served as the proxy service provider until a spin-off transaction from ADP in April 2007.

- Companies should have access to contact information for all beneficial owners (including Objecting Beneficial Owners, so-called 'OBOs'), as well as the ability to determine the distributors of their communications, in order to communicate most effectively.

- Brokers, banks and other intermediaries should not stand in the way of effective communications between companies and the beneficial owners of their securities.[23]

After the SEC announced it was undertaking a comprehensive review of the proxy system, the Coalition decided to convert these core principles into the development of a market-based alternative to the current regulatory framework for proxy distribution and communications.

3. The Coalition's Proposal of August 4, 2009

In its Concept Release, the SEC requests comments on a proposal developed in August 2009 by the Coalition, to create the ability for issuers to choose their own proxy service providers through a regulatory framework that separates the process of compiling an eligible beneficial owner list (as of an applicable record date) from the processes for proxy distribution and communication.[24] This proposal was developed as a starting point for policy discussions about reforming the proxy processing system.

Specifically, the Coalition's proposal recommended that the current functions of: (a) beneficial owner list compilation, and (b) proxy distribution and communications should be separated and operated under two different frameworks. The first function would remain a regulated one, with a central intermediary compiling beneficial owner names, contact information, and share positions as of each record date. This central intermediary would be selected and overseen by the NYSE, performing this list compilation function on an "at cost" basis for issuers and their agents.

The second function—proxy distribution and communications—would become the responsibility of each issuer, using a proxy distributor (and potentially other service providers) of its own choosing, with fees established through free market competition

[23] Letter from the Shareholder Communications Coalition to Alan L. Beller, Director, Division of Corporation Finance and Annette L. Nazareth, Director, Division of Market Regulation, Securities and Exchange Commission, July 29, 2005, available at http://www.shareholdercoalition.com/SCCLettertoSEC72905.pdf; and Letter from the Shareholder Communications Coalition to Catherine Kinney, President and Co-Chief Operating Officer, NYSE Group, Inc., June 30, 2006, available at http://www.shareholdercoalition.com/SCCLetterNYSE6302006.pdf.
[24] Shareholder Communications Coalition, Public Company Proxy Voting: Empowering Individual Investors and Encouraging Open Shareholder Communications, Aug. 4, 2009, available at http://www.shareholdercoalition.com/CoalitionDiscussionDraftAug2009.pdf (hereinafter "Shareholder Communications Coalition Discussion Draft").

among multiple service providers. Proxy materials would be distributed by issuer agents to all shareholders, once a list of beneficial owners eligible to vote is obtained from the central intermediary noted above.

The SEC explains this Coalition proposal in the Concept Release as follows:

> One alternative that has been suggested by a commentator is the creation of a central data aggregator that is given the right to collect beneficial owner information from securities intermediaries, but is required to provide that information to any agent designated by the issuer. The aggregator would be entitled to structured compensation for its activities. This could create competition among service providers for the distribution of the proxy materials by making the beneficial owner information available to all service providers, allowing them to compete in providing services to forward proxy materials. This would also place the choice of proxy service provider in the hands of the entity that must pay for the distribution—the issuer—rather than the securities intermediary, which has no incentive to reduce costs.[25]

As explained earlier, the Coalition's proposal contemplates the use of a central securities intermediary—called a data aggregator in the proposal—which would work with broker-dealers and banks to maintain beneficial owner data used for distributing proxy materials for shareholder meetings. This central securities intermediary would be selected by a special NYSE committee established solely for this purpose.

The special NYSE committee proposed in the Coalition's policy paper would comprise representatives of broker-dealers, banks, issuers, institutional investors, individual investors, and other identified stakeholders. The NYSE committee would use a competitive bidding process to select and retain the entity to perform this data aggregation function. Under the Coalition's proposal, the NYSE committee would enter into a contractual agreement with the entity providing these data aggregation services for a recommended term of five (5) years. On an ongoing basis, the NYSE committee would also be responsible for oversight of the data aggregator function performed by this entity.

A similar process to what the Coalition is proposing was implemented in 1984-1985, and led to the selection of the Independent Election Corporation of America ("IECA") to serve as the central intermediary to compile and supply beneficial owner lists.

This regulatory process started in September, 1984, with the formation of the Ad Hoc Committee on Identification of Beneficial Owners by the NYSE. This Committee was composed of representatives of both the securities and issuer communities and was

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[25] Concept Release at 42,997-42,998.

tasked with the responsibility of resolving "cost issues and [developing] a workable and effective system that would be of maximum use to registrants and not burdensome to brokers."[26]

As a part of its evaluative process, the Ad Hoc Committee determined that the proxy processing system needed a central intermediary to compile and supply beneficial owner lists and, after a request for proposal process was completed, selected IECA to perform this function:

> To make the system work and to ensure that registrants find the beneficial owner lists useful and meaningful, the Ad Hoc Committee also determined that an intermediary was necessary. By employing an intermediary to compile and to supply beneficial owner lists, registrants will be assured that the lists are compiled in a standardized manner. Moreover, brokers will be assured that the source of the lists will be kept confidential. In addition, economies of scale will be realized by permitting them to delegate this function to an intermediary which will maximize cost savings while minimizing burdens on brokers. The Ad Hoc Committee requested proposals and selected Independent Election Corporation of America ('IECA') to serve as the intermediary between registrants and brokers in supplying lists of beneficial owners. In this function, IECA will be governed by a user board consisting of registrants, brokers, and other industry representatives.[27]

This regulatory framework has been in place for the last 25 years, with the same entity providing these services, as IECA was acquired in 1992 by the division of ADP that later became Broadridge Financial Solutions, Inc.

Under the Coalition proposal, the data aggregator selected for this purpose would serve as the central repository for all beneficial owner contact information and positions. The data aggregator would obtain contact information and share positions as of the record date for all eligible beneficial owners from broker-dealers, banks, and other intermediaries. As noted above, beneficial owner share positions would be fully reconciled as of a specified record date for a shareholder meeting. This share position reconciliation would include shares on loan and any "failure to deliver" shares. All intermediaries would be required to reconcile beneficial owner and other positions back to their total holding position at DTC and/or another depository institution.

[26] Facilitating Shareholder Communications, Exchange Act Release No. 34-21901, 1985 SEC LEXIS 1854, at 4 (Mar. 28, 1985). IECA was acquired in 1992 by the division of ADP that later became Broadridge Financial Solutions, Inc.

[27] Facilitating Shareholder Communications, Exchange Act Release No. 34-22533, 1985 SEC LEXIS 530, at 8-9 (Oct. 15, 1985).

Once the data aggregator has received reconciled beneficial owner information from all securities intermediaries, it would then compile and transmit the electronic file of owners to the issuer or the issuer's agent. Beneficial owner delivery preferences—such as a preference for electronic distribution, the process of householding accounts, and the use of wrap or other accounts where investment discretion is transferred to an intermediary—would be stored by the broker-dealer, bank, or an agent of either. The issuer's agent would then load the accounts into the file for a shareholder meeting, similar to the manner in which registered accounts or other third-party data files (e.g., employee benefit plan participants) are handled.

As noted in the Coalition's Discussion Draft of August 4, 2009, no information about any intermediary relationship would be provided to an issuer. In other words, as is the case today, the names of broker-dealers and other intermediaries with whom the beneficial owners maintain their accounts would not be disclosed to issuers or their service providers.

To ensure that access to beneficial owner lists is accomplished in a cost effective manner, the Coalition's proposal recommends that the compilation of the beneficial owner lists for shareholder meetings and other communications purposes should be structured as an "at-cost" function, pursuant to a fee schedule that would be established by the NYSE.[28]

4. Estimated Costs to Issuers of the Data Aggregation Proposal

The last extensive evaluations of the U.S. proxy processing system were more than 25 years ago: the SEC's Street Name Study in 1976 and, six years later, the report of the SEC's Advisory Committee on Shareholder Communications in 1982.[29] The Street Name Study in 1976 observed that the cost to issuers of sending proxy materials to shareholders directly was significantly lower than sending the same material through intermediary record-holders.[30] However, the back office systems in place at the time, relying on mailing labels and magnetic tapes, were not sophisticated enough to handle the

[28] Under the Coalition's proposal, access to beneficial owner lists would be non-discriminatory. Both a company and its shareholders seeking to communicate with beneficial owners would have equal access under state law and SEC rules to a beneficial owner list, upon payment of the NYSE-approved fee for this list.

[29] Securities and Exchange Commission, Final Report of the Securities and Exchange Commission on the Practice of Recording the Ownership of Securities in the Records of the Issuer in Other than the Name of the Beneficial Owner of such Securities Pursuant to Section 12(m) of the Securities Exchange Act of 1934, Dec. 3 1976 (hereinafter "SEC Street Name Study"); and Securities and Exchange Commission, Improving Communications between Issuers and Beneficial Owners of Nominee Held Securities, Report of the Advisory Committee on Shareholder Communications, June 1982 (hereinafter SEC Advisory Committee Report"). Courtesy of Dechert LLP, both documents are available at http://www.sec.gov/comments/s7-14-10/s71410-29.pdf.

[30] SEC Street Name Study at 25 ("The cost data indicate that the per unit cost of sending proxy materials to beneficial owners through intermediaries is substantially higher than the per unit cost of sending these materials directly to shareholders.").

collection, storage, and transmission of beneficial ownership information.[31] Thus, the SEC concluded the following in its 1976 Study:

> Disclosure of the names of shareowners by intermediaries to issuers would not interfere with those functions of the securities and banking industries which depend on nominee name arrangements. It would, however, impose substantial recordkeeping burdens on intermediaries and many issuers, and does not appear feasible absent the development of a compatible industry-wide computer system for the transmission of names and the development of a standard format.[32]

Obviously, this is not the case today. The securities industry and the service providers to the industry have developed and now operate very sophisticated electronic networks, either in real-time or over short intervals of time, that are designed for much more intricate functions than the relatively simple data demands necessary for the distribution of proxy materials and direct communications with beneficial owners.

Several comparisons and metrics are available to estimate the cost of providing beneficial owner information to issuers for proxy distribution and communications purposes. The first is the pricing which current exists to obtain a list of Non-Objecting Beneficial Owners ("NOBOs), which has been in place since 1986. The second is the very similar services being offered to broker-dealers and mutual funds through the National Securities Clearing Corporation ("NSCC"), an "at-cost" facility owned by the brokerage industry. And third, the results of a new study by The Securities Transfer Association, a member of the Coalition, which evaluated the costs of having competitive pricing for proxy distribution services.

a. <u>The Pricing of the NOBO List</u>

An issuer seeking to communicate with beneficial owners who are classified as NOBOs pays $0.065 for the name, contact information, and share position of each beneficial owner classified in this manner.[33] This pricing has been in place since 1986,

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[31] <u>See</u> <u>SEC Advisory Committee Report</u> at 61-62 ("The Committee was concerned about the extent to which there currently exists automated systems for the collection, storage and transmission of beneficial ownership information. ... The technical issue of greatest concern was the assimilation of lists from numerous nominees.").

[32] <u>SEC Street Name Study</u> at 41. <u>See also</u> Requirements for Dissemination of Proxy Information to Beneficial Owners by Issuers and Intermediary Broker-Dealers, Exchange Act Release No. 13719, 1977 SEC LEXIS 1335 (July 5, 1977) ("The [Street Name] Study found, and the comment letters confirm, that it would be extremely burdensome for large issuers and transfer agents to accept from intermediaries the names of potentially thousands of beneficial owners, absent the development of a standard format for the submission of names and compatible computer software.").

[33] NYSE Rules 451and 465 Supplementary Material, <u>available at</u> <u>http://nyserules.nyse.com/nysetools/PlatformViewer.asp?SelectedNode=chp_1_2&manual=/nyse/rules/nyse-rules/</u>.

when the SEC accepted the recommendation of a NYSE Ad Hoc Committee on Identification of Beneficial Owners, which evaluated broker-dealer cost data to provide these NOBO lists to issuers.[34]

Over the last 24 years, the cost of providing these NOBO lists has been reduced substantially because of technological advances, but, as a result of a lack of market forces, this NOBO rate has remained unchanged. This rate is a useful benchmark, however, for estimating the costs for compiling and transmitting beneficial owner information under the Coalition's proposal, as a central intermediary would use similar processes to compile and provide this data as it would to do the same for a NOBO list.

b. The NSCC Networking Service for Mutual Funds

The National Securities Clearing Corporation ("NSCC") provides several back office services which standardize, centralize, and automate the processing and settling of mutual fund transactions.[35] The NSCC also offers a service—called Networking—which facilitates the exchange of customer account information between mutual funds and their financial intermediaries, including broker-dealers, banks, investment advisers, and retirement plans.

Since NSCC Networking serves as a central intermediary for beneficial owner-level information between securities intermediaries and mutual funds, it is a useful model to study in evaluating the practicalities of the Coalition proposal for a central data aggregator, to compile and transmit beneficial owner lists to issuers. Another benefit of examining this NSCC service is that it can easily expanded to provide mutual funds—as issuers—with a cost-effective process for obtaining beneficial owner information for proxy distribution and communications purposes.

NSCC merged with DTC in 1999 to become the Depository Trust & Clearing Corporation ("DTCC"). DTCC is owned by its customers, which are almost exclusively financial services firms, such as broker-dealers, banks, mutual funds, and other securities intermediaries. DTCC also operates on an "at cost" basis, which means that excess revenues from transaction fees are returned to its members and users.[36]

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[34] Order Approving Proposed Rule Change, Exchange Act Release No. 34-22889, 51 Fed. Reg. 5,821 (Feb. 18, 1986) ("The Ad Hoc Committee considered what the brokers' reasonable costs for maintaining and providing beneficial ownership data would be. Representatives from the Securities Industry Association estimated the costs to be approximately $0.065 per name. The Committee accepted this figure and recommended to the NYSE that the fair and reasonable charge for reimbursement of brokers for providing beneficial ownership information to requesting issuers be set at $0.065 per name.").

[35] The NSCC was established in 1976 as a clearinghouse registered with the Securities and Exchange Commission ("SEC") to provide clearing and settlement services for a wide variety of securities. Over time, the NSCC's services have expanded into mutual funds, primarily through its Fund/SERV and Networking services.

[36] The Depository Trust & Clearing Corporation, An Introduction to DTCC Services and Capabilities, undated, available at http://www.dtcc.com/downloads/about/Introduction_to_DTCC.pdf ("DTCC is owned by its principal users and operates on an at-cost basis, which means that we look to return any excess

The utilization of NSCC services to connect broker-dealers with mutual funds started in 1984, with the establishment of a joint task force between the Investment Company Institute ("ICI") and the National Association of Securities Dealers ("NASD").[37] The goal of this joint task force was to "develop automation for processing and settling mutual fund transactions."[38] The task force selected the NSCC to develop an automated order-entry clearance system, which led to the creation of the NSCC Fund/SERV mutual fund trading platform, a centralized and standardized processing system for purchasing, redeeming, and registering mutual fund shares.[39]

After the NSCC Fund/SERV service was launched, a parallel need was identified to develop a similar platform to exchange customer account information between mutual funds and their intermediaries. This need led to the NSCC Networking service. A recent paper issued by the ICI describes how this NSCC service was created:

> Once automated fund trading was established, the industry turned to the problem of sharing account data. At the time, broker-dealer systems struggled with reconciling the omnibus position on the mutual fund books with the investor positions on their books. This reconciliation process resulted in inconsistencies, for both the firms and the fund complexes, that had to be resolved manually. To remedy this costly and time-consuming problem, an ICI committee and NSCC sought an automated solution to seamlessly exchange data. The result is the Networking service used today.[40]

When an account is "Networked," the mutual fund shares are reconciled between broker and fund records and converted from physical shares to electronic book-entry form. Networking then permits a customer's account to appear identically on a broker's user records and, at the same time, on the records of a mutual fund or its transfer agent.[41]

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revenues to our customers. Driven in part by economies of scale and tight fiscal controls, our transaction fees are among the lowest in the world.").

[37] Letter from Donald E. O'Connor, Vice President – Operations, Investment Company Institute, to David Kelly, President, National Securities Clearing Corporation, April 7, 1987, as cited in Order Granting Approval of a Proposed Rule Change Concerning Networking, Exchange Act Release No. 34-26376, 53 Fed. Reg. 52,544 (Dec. 28, 1988).

[38] Investment Company Institute and Independent Directors Council, Navigating Intermediary Relationships, September 2009, at 24 available at http://www.ici.org/pdf/ppr_09_nav_relationships.pdf.

[39] Id.

[40] Id. at 24.

[41] See Order Approving Proposed Rule Change Relating to the Development of an Interface with the National Securities Clearing Corporation's Networking Service for Mutual Fund Transactions, Exchange Act Release No. 34-31487, 57 Fed. Reg. 56,611 (Nov. 30, 1992). Because Networking is a centralized and standardized service, account information appears identically on the records of both sides of fund transactions. See "DTCC's Networking Service for Fund Industry Enhanced to Support Greater Transparency of Breakpoints; Move Follows Regulatory Recommendations by Joint NASD/Industry Task Force," Business Wire, Apr. 13, 2005, available at http://www.dtcc.com/news/press/releases/2005/networking_service.php.

In December of 1988, the SEC moved forward to approve this new service, stating:

> NETWORKING provides participants with the ability to transmit mutual fund customer account information in a centralized and automated fashion. Before NETWORKING, broker-dealers were required to devise and maintain different communications systems to convey customer account information to each mutual fund processor. Thus, the Commission believes NETWORKING provides broker-dealers with a more efficient means of communicating customer account information between broker-dealers and funds, and will further enhance the prompt and accurate clearance and settlement of customer-side mutual fund transactions.[42]

Since its approval, the Networking service has expanded to include banks and other financial intermediaries.[43] The specific benefits of the Networking service to funds and their securities intermediaries were highlighted in a 1992 NSCC Annual Report, by the President of the Investment Company Institute:

> Networking, introduced in 1988, provides a standardized communications pipeline through which customer account level activity can be exchanged in both directions between broker/dealers and funds. Using the system, brokers are able to carry customers' mutual fund positions on their stock record in much the same manner as they do for corporate security positions. Networking also offers centralized settlement of cash dividends and capital gains distributions.[44]

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[42] Order Granting Approval of a Proposed Rule Change Concerning Networking, Exchange Act Release No. 34-26376, 53 Fed. Reg. 52,544 (Dec. 28, 1988).

[43] Order Approving Proposed Rule Change Relating to the Development of an Interface with the National Securities Clearing Corporation's Networking Service for Mutual Fund Transactions, Exchange Act Release No. 34-31487, 57 Fed. Reg. 56,611 (Nov. 30, 1992) ("The proposal will enable participating mutual funds and [bank] participants who utilize Fund/Serv through DTC to exchange electronically, in a standardized format, non-trade account data such as subaccount information, closing position balances, and dividend processing records."). NSCC has since expanded its Networking service beyond broker-dealers and banks to include third party administrators of defined contribution plans, unit investment trusts, and other financial institutions. See Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Making Orders from Defined Contribution Plans Eligible for NSCC's Mutual Fund Service, Exchange Act Release No. 34-38553, 62 Fed. Reg. 24,523 (May 5, 1997); and Order Granting Approval of a Proposed Rule Change to Modify NSCC's Rules to Permit Unit Investment Trusts to be Processed Through Fund/SERV, Networking, and Mutual Fund Commission Settlement Services, Exchange Act Release No. 34-38632, 62 Fed. Reg. 27,821 (May 21, 1997).

[44] Matthew P. Fink, President, Investment Company Institute, National Securities Clearing Corporation 1992 Annual Report, at 15-16 (on file with the Coalition).

The NSCC Networking service provides significant operational efficiencies between brokers and funds, through the creation of a standardized, centralized, and automated system to share investor-level account information. And, as a result of its "at cost" structure, NSCC transaction fees have been reduced significantly over time, as initial start-up costs are recovered, the use of technology is expanded, and the advantages of a centralized infrastructure model produce economies of scale for the customers of NSCC.

As an example, the pricing for NSCC Networking when it was initially approved was $0.06 per beneficial position for mutual funds paying dividends monthly and $0.04 per beneficial position for mutual funds paying dividends less frequently than monthly.[45] These fees were reduced in 1995,[46] 1996,[47] and in 1998.[48] By 2006, these fees had dropped to $0.0025 per beneficial position, or 25 cents for 100 account transactions; and the current fee for this service is $0.001 per beneficial position, or 10 cents for 100 account records.[49] This represents a reduction in fees of <u>more than 98%</u> since 1989, when the NSCC Networking service was first established.

c. <u>The STA Survey on Proxy Distribution and Communications Costs</u>

The Securities Transfer Association ("STA") recently conducted a survey of its largest transfer agent members, regarding the estimated costs of implementing the Coalition's 2009 proposal to reform the proxy distribution process.[50]

As noted above, the Coalition's proposal recommended that the current functions of compiling beneficial owner lists and actually distributing proxy materials should be separated and operated under two different frameworks. The first function would remain a regulated one, with a central intermediary compiling beneficial owner names, contact information, and share positions as of each record date. The second function, involving

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[45] Proposed Rule Change By National Securities Clearing Corporation Regarding the Establishment of Fees for NSCC's Networking Service, Exchange Act Release No. 34-26404, 54 Fed. Reg. 341 (Jan. 5, 1989).
[46] Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Reducing Networking Account Fees, Exchange Act Release No. 34-35983, 60 Fed. Reg. 38,071 (July 25, 1995)(authorizing a reduction in NSCC Networking fees to a range of between $0.035 and $0.023 per beneficial position).
[47] Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Revising Service Fees, Exchange Act Release No. 34-37293, 61 Fed. Reg. 30,274 (June 14, 1996)(authorizing a reduction in NSCC Networking fees to a range of between $0.025 and $0.015 per beneficial position).
[48] Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Charges, Exchange Act Release No. 34-39863, 63 Fed. Reg. 19,780 (Apr. 21, 1998)(authorizing a reduction in NSCC Networking fees to a range of between $0.020 and $0.010 per beneficial position).
[49] Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Revise the Fee Structure of NSCC, Exchange Act Release No. 34-53099, 71 Fed. Reg. 2,969 (Jan. 11, 2006)(authorizing a reduction in NSCC Networking fees to an activity fee of $0.0025 per transaction); and Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Revise Fee Schedule, Exchange Act Release No. 34-61413, 75 Fed. Reg. 4,894 (Jan. 29, 2010), <u>available at</u> <u>http://www.dtcc.com/downloads/legal/rule_filings/2009/nscc/2009-12.pdf</u>.
[50] Securities Transfer Association, <u>Estimated Cost Savings of a Market-Based Proxy Distribution Model</u>, Oct. 14, 2010, <u>available at</u> <u>http://www.stai.org/pdfs/STA-White-Paper-10-14-2010.pdf</u>.

both proxy distribution and shareholder communications, would become each issuer's responsibility, using a proxy distributor (and potentially other service providers) of its own choosing. Proxy materials would be distributed by issuers or their agents to all shareholders, once a list of beneficial owners eligible to vote is obtained from the central intermediary.

The STA survey assumed a cost of 5 cents per beneficial owner position for a central securities intermediary to compile contact information and share position for each beneficial owner of an issuer. This estimated fee represents the high end of the data processing market and is very similar to the current fee for obtaining the same information for NOBOs (i.e., \$0.065/name) and the original fee assessed in the NSCC Networking service 25 years ago (i.e., between \$0.04/name and \$0.06/name), both described in greater detail above.

The STA in its survey then asked each participating transfer agent for a price quote to distribute proxy materials to beneficial owners for three different types of issuers, using the rate cards they currently use for registered accounts.

The STA members were provided with actual invoices using current NYSE-approved fees for proxy processing services involving three different types of issuers. The different beneficial owner positions evaluated were 6,000, 48,000, and 88,000 respectively. The results of this STA survey demonstrated significant cost savings to issuers in a non-regulated environment for proxy distribution services.

For the example of an issuer with 6,000 beneficial owner positions, the actual invoice cost using the NYSE-approved fee system was \$10,100, excluding postage and sales tax. The average transfer agent price quote for the same services, including the cost of obtaining the beneficial owner list, was \$8,027, resulting in a savings to the issuer of \$2,073, or 20.52% over the regulated fee model.[51]

For the issuer with 48,000 beneficial owner positions, the actual invoice cost using the NYSE-approved fee system was \$50,000, excluding postage and sales tax. The average transfer agent price quote for the same services, including the cost of obtaining the beneficial owner list, was \$14,192, resulting in a savings to the issuer of \$35,808, or 71.62% over the regulated fee model.[52]

Finally, for the issuer with 88,000 beneficial owner positions, the actual invoice cost using the NYSE-approved fee system was \$100,000, excluding postage and sales tax. The average transfer agent price quote for the same services, including the cost of obtaining the beneficial owner list, was \$40,434, resulting in a savings to the issuer of \$59,566, or 59.57% over the regulated fee model.[53]

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[51] Id. at 4.
[52] Id. at 5.
[53] Id. at 7.

As noted above, all of these calculations included the 5 cents charged by the central data aggregator for each beneficial owner name, contact information, and share position.

The STA study also produced estimates for larger issuers, evaluating a company with 230,000 beneficial owner positions and a company with 2,000,000 beneficial owner positions. The estimated cost savings in these examples were also significant. Using the NYSE-approved fee system, the issuer with 230,000 beneficial owner positions can be expected to pay approximately $200,000 in fees, excluding postage and sales tax. The estimated transfer agent quote for these same services, using the same analysis noted earlier, would result in an average invoice of $105,800, including the cost of obtaining the beneficial owner list. This results in savings to the issuer of $94,200, or <u>47.10%</u> over the regulated fee model.[54]

Applying the same analysis to the issuer with 2 million beneficial owner positions, it can expect to pay approximately $1,300,000 in fees, excluding postage and sales tax. The estimated transfer agent quote for these same services would result in an average invoice of $600,000, including the cost of obtaining the beneficial owner list. This results in savings to the issuer of $700,000, or <u>53.84%</u> over the regulated fee model.[55]

This STA survey demonstrates that transfer agent pricing of proxy processing services for registered owners is significantly less than the use of the NYSE-approved fee schedule for assessing costs of proxy processing activities involving beneficial owners. Similarly, this study demonstrates that a transition to a model in which free market competition can establish fees for proxy distribution services results in significant cost savings to issuers, especially when an issuers (and their agents) can obtain beneficial owner lists on an "at cost" basis from a central intermediary selected for this purpose.

More information about this STA survey, including its methodology, can be found on the STA's website at <u>www.stai.org</u>.

II. Communications and Shareholder Participation

A. Issuer Communications with Shareholders: The Need for a Direct Communications Process

1. The Elimination of the NOBO/OBO Classification System

As noted in the Concept Release, Business Roundtable, one of the members of the Coalition, submitted a Petition for Rulemaking in 2004, advocating the elimination of the classification system in which beneficial owners are classified into one of two categories:

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[54] <u>Id</u>. at 8.
[55] <u>Id</u>.

Non-Objecting Beneficial Owners ("NOBOs") or Objecting Beneficial Owners ("OBOs").[56] This recommendation was supported by the Coalition's Discussion Draft of August 4, 2009.[57]

The NOBO/OBO classification system was established in 1983, as part of a shareholder communications framework recommended by the 1982 SEC Advisory Committee on Shareholder Communications.[58] Under this framework, which was subsequently approved by the SEC, public companies could send certain communications directly to NOBOs, such as annual reports, but would have to rely on broker-dealers and banks to distribute proxy materials to beneficial owners.[59]

The NOBO/OBO system impedes communications between shareholders and public companies and also creates barriers to communications among shareholders themselves. A company seeking to communicate with its beneficial owners is required to use a circuitous and expensive process using one service provider and a chain of intermediaries, or it can communicate in a limited fashion on non-proxy matters, with those owners classified as NOBOs, which typically represent only a portion of a company's shareholder base.

Investors are confused about this classification system, as demonstrated by the Investor Attitudes Survey conducted for the NYSE Proxy Working Group in 2006.[60] However, the Survey also indicated that when a comprehensive explanation of the difference between NOBO and OBO status is given, investors select NOBO by nearly a 2-1 margin.[61] The Survey also found that investor interest in OBO status shrinks even further when there is a \$25 or \$50 cost attached to maintaining such status.[62]

After more than twenty-five years, the NOBO/OBO classification system has clearly outlived its usefulness. There is no evidence that beneficial owners who are long-term investors have a need for anonymity with the companies in which they invest. And, in an age of instant communications and heightened corporate governance needs, there is no reason to have this type of barrier to open communications between a public company and its beneficial owners. The reasons for the elimination of this classification system are many:

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[56] Business Roundtable, Petition for Rulemaking Regarding Shareholder Communications, File No. 4-493 (Apr. 12, 2004), available at http://www.shareholdercoalition.com/BRTPetition41604.pdf (hereinafter "Business Roundtable Petition").
[57] Shareholder Communications Coalition Discussion Draft, at 5.
[58] See CII Study at 9.
[59] See Facilitating Shareholder Communications Provisions, Exchange Act Release No. 34-20021, 48 Fed. Reg. 35,082 (Aug. 3, 1983).
[60] See Opinion Research Corporation, Investor Attitudes Survey, Apr. 7, 2006, at 3, available at http://www.shareholdercoalition.com/NYSEORCInvestorStudy4706.pdf ("Overall, there is a great deal of confusion about the proxy voting process, even though most investors say they open and read at least some of their proxy statements, and nearly half claim to always vote on the issues identified.").
[61] Id. at 21.
[62] Id. at 22.

- Individual investors are confused by the NOBO/OBO system and do not generally have an expectation of anonymity regarding the companies they invest in regarding corporate governance matters;

- Research on the issue of shareholder communications system indicates that a substantial majority of individual investors prefer NOBO status, especially if there is a cost to maintain anonymity from an issuer;

- The NOBO/OBO system prevents public companies from knowing the identities of their beneficial owners and communicating with them;

- Any type of communications with beneficial owners must be through an expensive and circuitous system that creates disincentives for direct communications, when the opposite should be the case;

- Companies are not using the NOBO list for shareholder communications, as it cannot be used for proxy distribution purposes and does not permit a company to have one process to communicate uniformly with all of its investors; and

- There is a lack of consistency (or uniformity) among broker-dealers regarding how beneficial owners are classified as NOBOs or OBOs, with no standards or regulatory requirements for how a broker-dealer reviews this classification with its customers at account opening or on a periodic basis (e.g., to re-visit a classification decision).

For these reasons, the Coalition believes that the NOBO/OBO classification system for beneficial owners should be eliminated. Public companies should have access to contact information for all of their beneficial owners and should be permitted to communicate with them directly.[63] Among other benefits, this reform would bring the U.S. system in line with the capital market practices of other countries, which are generally more transparent regarding the identities of beneficial owners.[64]

The Coalition does not believe that the street name system was established to help investors maintain their anonymity from the companies they are investing in as owners.

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[63] Communications with beneficial owners should only be for purposes involving the corporate or business affairs of a company.

[64] For example, in the United Kingdom, a public company has the right to learn the identity of individuals and institutions with voting rights and/or beneficial owner interests in its shares. The law imposes both civil and criminal penalties for a failure by a financial intermediary to provide information about beneficial owners, after a request for such information has been made. See Sections 793-795 of the UK Companies Act 2006. In Australia, a public company is required to keep a register with the name and address of all its shareholders, including beneficial owners. See Section 169 of the Commonwealth of Australia Corporations Act 2001.

However, the Coalition is very mindful of the fact that some investors—both individual and institutional—may want to retain their anonymity, either for trading purposes or for proxy voting purposes, or both.

To address this concern about investor privacy, the Coalition has recommended that those individual or institutional investors who wish to remain anonymous should be permitted to register their shares in nominee name or hold their shares in a custodial arrangement. Nominee status and custodial arrangements are common methods for institutional investors to hold their shares and these methods would not change under the Coalition's proposal. The Coalition's proposal would merely make available to individual investors these methods for holding shares that are currently available to institutional investors, in lieu of an OBO classification. The Coalition also advocates that the cost of registering shares in nominee status (or holding shares in a custodial arrangement) for individual investors should not be borne—directly or indirectly—by those investors.

Obviously, before any change is made to the NOBO/OBO system, there should be adequate notice to all investors of the elimination of the OBO classification, so that those who are currently classified as OBOs can have adequate time to consider whether to establish a nominee account.

Finally, the Coalition recommends that SEC privacy regulations should apply to the use of beneficial owner information by an issuer and received from a broker-dealer or a bank. For example, SEC regulations permit the disclosure of information for purposes: (a) "necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes"; or (b) "as permitted by law."[65]

2. The Transfer of Proxy Voting Authority to Beneficial Owners

For more than 50 years, Delaware law has vested the power to vote on matters before a Delaware corporation in its registered holders. As stated in 1957 by the leading case on this subject in Delaware:

> Under the General Corporation Law, no one but a registered stockholder is, as a matter of right, entitled to vote, with certain exceptions not pertinent here. If an owner of stock chooses to register his shares in the name of a nominee, he takes the risks attendant upon such an arrangement, including the risk that he may not receive notice of corporate proceedings, or be able to obtain a proxy from his nominees. The corporation, except in special cases,

[65] See 17 C.F.R. § 248.14(a), 17 C.F.R. § 248.14(b)(2), and 17 C.F.R. § 248.15(a)(7)(i). Similar privacy provisions apply to banks.

> is entitled to recognize the exclusive right of the registered owner to vote ....[66]

As noted in the Concept Release, securities intermediaries do not typically transmit actual proxy cards to beneficial owners as a part of the proxy solicitation process. While some banks do send proxy cards to their beneficial holders, broker-dealers and many banks use a VIF, as noted earlier, for beneficial owners to indicate their voting preferences for an annual or special shareholder meeting. Under this process, a broker-dealer or bank is authorized to act as the shareholder of record, through an omnibus proxy executed by DTC or another depository institution, an instrument which transfers proxy voting authority to these financial institutions.

The Concept Release notes that it has been recommended that the SEC enable issuers to communicate directly with their beneficial owners, in part, by requiring broker-dealers and banks to execute an omnibus proxy in favor of their underlying beneficial owners.[67] This recommendation was one of several proposals contained in the 2004 Petition for Rulemaking by Business Roundtable. This Petition stated the following regarding this issue:

> ... the Commission should consider requiring brokers, banks and their agents to pass voting rights directly to beneficial owners by executing omnibus proxies in their favor. Banks are already required to execute omnibus proxies to pass voting rights to respondent banks, and DTC uses omnibus proxies to pass voting rights to its participants. The Commission should similarly require brokers and banks to execute omnibus proxies in favor of their customers, thus enabling them to vote their shares directly and thereby avoid the circuitous and inefficient process of requesting 'voting instructions' from beneficial owners. Providing the right to vote to the beneficial owner would simplify the voting and vote tabulation process, and would enable those companies using Internet voting systems for record holders to extend that system to all beneficial owners.[68]

The Coalition supported this recommendation by Business Roundtable in its 2009 Discussion Draft, noting that a transfer of proxy authority to the beneficial owner level

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[66] American Hardware Corp. v. Savage Arms Corp., 136 A.2d 690, 692 (Del. 1957). See also Berlin v. Emerald Partners, 552 A.2d 482,494 (Del. 1988)("Delaware law expressly recognizes the right of the corporation to rely upon record ownership, not beneficial ownership, in determining who is entitled to notice of and to vote at the meetings of stockholders."); and Shaw v. Agri-Mark, Inc., 663 A.2d 464, 469 (Del. 1995)("... a corporation may rely on its stock ledger in determining which stockholders are eligible to vote.").

[67] Many institutional investors use a proxy voting service called ProxyEdge to cast their votes. None of the proposals suggested by the Coalition are intended to change the ability of institutional investors to continue to use this service.

[68] Business Roundtable Petition at 14.

will permit an investor to transfer this authority back to a broker, bank, or other third-party to help facilitate and improve the participation of individual investors in the proxy voting system:

> Proxy voting authority should be transferred to each beneficial owner, as of the record date established for a shareholder meeting, through the same omnibus proxy process currently employed by DTC. Beneficial owners would be free to transfer their proxy authority back to their broker or bank—through a client-directed voting agreement or similar arrangement—or to another third-party intermediary.[69]

The 2009 Discussion Draft goes on to note that a transfer of proxy voting authority to the beneficial owner level eliminates the need for broker discretionary voting under Rule 452 and also eliminates the need for brokers and banks to provide their service provider with a power of attorney for proxy voting purposes.[70]

This omnibus proxy authority proposal also finds support in the academic community. In his seminal 1988 law review article on the SEC's shareholder communications rules, Professor Robert Brown of the University of Denver College of Law recommended the following:

> With respect to the direct mailing of proxy cards, brokers and banks should be required to issue an omnibus proxy in favor of beneficial owners. Thereafter, the proxy card can be mailed directly. Already depositories execute omnibus proxies in favor of participants; banks execute omnibus proxies in favor of respondent banks.[71]

A second commentator, Shaun M. Klein, also recommended this approach in a 1997 law review article:

> Brokers and banks would have to issue blanket omnibus proxies in favor of all beneficial owners, thereby allowing proxy cards to be mailed directly to the real owners. The universal omnibus proxy would eliminate brokers and banks from the voting process, placing decisions about corporate governance where they should be—with investors.[72]

[69] Shareholder Communications Coalition Discussion Draft at 7.

[70] Id.

[71] J. Robert Brown, Jr., The Shareholder Communications Rules and the Securities and Exchange Commission: An Exercise in Regulatory Utility or Futility?, 13 J. Corp. L. 683 (Spring 1988), at 787-788, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=993866 (hereinafter "Brown Article").

[72] Shaun M. Klein, Rule 14b-2: Does It Actually Lead to the Prompt Forwarding of Communications to Beneficial Owners of Securities?, 23 J. Corp. L. 155 (Fall 1997), at 10, available at http://www.shareholdercoalition.com/KleinArticle1997.pdf.

Over the years, one criticism of this proposal has been its potential impact on the ability of an issuer to obtain a quorum at a shareholder meeting. In his 1988 law review article, Professor Brown offers the following suggested solution to address this concern:

> At first glance, an omnibus proxy approach might seem to make a quorum more difficult to obtain. Under the existing system, the [NYSE] ten-day rule allows brokers to vote uninstructed shares for purposes of achieving a quorum and for noncontroversial matters. By executing an omnibus proxy and mailing proxy cards directly, brokers are essentially eliminated from the voting process. To the extent that large numbers of beneficial owners failed to return proxy cards, issuers might have trouble obtaining a quorum. No longer would the ten-day rule ensure sufficient shares present for a quorum. There is, however, an obvious solution. An issuer could provide brokers with a list of unvoted shares; shares for which no proxy had been returned. The broker could execute a proxy for the unvoted shares. The second proxy would revoke the initial proxy, at least with respect to the unvoted shares, and enable the shares to be counted for quorum purposes and for noncontroversial matters.[73]

A version of this suggested solution was also offered in the NYSE Proxy Working Group Report in 2006:

> As discussed above, without allowing brokers to vote uninstructed shares some issuers (especially small and mid-cap issuers) may have difficulty achieving quorums at stockholders meetings. One alternative to address the competing needs at issue is to grant brokers the limited authority as record owners to represent unreturned or uninstructed proxies at shareholder meetings for the sole purpose of establishing a quorum. Under this proposal, broker discretionary voting would be eliminated completely, with the NYSE granting brokers the limited authority as record owners to represent unreturned or uninstructed proxies at shareholder meetings for the sole purpose of establishing a quorum.[74]

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[73] Brown Article at 788. Shaun Klein makes the same recommendation in his article cited above ("Quorum problems may arise from the direct communications system with the blanket omnibus proxy, but the method could allow brokers and bankers to execute the unvoted shares. Allowing all nominees to vote their uninstructed shares would vastly improve the current system in which only brokers can vote their uninstructed shares, while banks cannot."). See supra note 72.

[74] NYSE Proxy Working Group Report at 18-19. The Report also stated that counting broker votes for quorum purposes does not appear to be a settled matter under Delaware law, although it cited a Delaware Supreme Court case, Berlin v. Emerald Partners, 552 A.2d 482 (Del. 1989), in which the court held that a limited proxy can be counted for the purpose of establishing a quorum, even where it is neutral in other respects. See Id. at 19.

A second alternative to the potential quorum issue is to add conditional language to the omnibus proxy instrument, which authorizes the broker, bank, or other intermediary to vote the shares of any unreturned proxies for the limited purpose of establishing a quorum for the shareholder meeting. This alternative appears to be consistent with existing SEC rules.[75]

B. Means to Facilitate Retail Investor Participation: The Need for a Robust Retail Investor Education Campaign

The Coalition agrees with the recommendation in the Concept Release to explore new methods to educate individual investors about the proxy system. Survey research clearly indicates that the substantial majority of individual investors do not understand the workings of the very complex proxy system in place today. And new methods for stimulating interest in corporate governance and encouraging participation in proxy voting among individual investors are very important, if retail voting levels are to increase.

In its Discussion Draft of August 4, 2009, the Coalition recommended that a national education campaign be launched to explain the proxy voting process and to encourage individual investors to vote their proxies at shareholder meetings.[76] The Coalition also agrees with the SEC that issuer (and broker-dealer) websites be used as educational platforms to explain the voting process and encourage participation. Clearly, this education campaign should begin after the SEC has determined how best to reform the proxy system, so that the new rules are the focus of this initiative.

The Coalition believes that its members can play a helpful role in designing and implementing a national investor education program and looks forward to working with the SEC and other proxy system participants to develop such an education program. These efforts are going to be especially important, as the SEC begins to implement reforms to its proxy voting and shareholder communications rules.

III. Relationship between Voting Power and Economic Interest

A. Proxy Advisory Firms: The Need for More Regulatory Oversight and Transparency

The Coalition is supportive of the SEC's interest in reviewing the role of firms

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[75] See 17 C.F.R. § 240.14a-4(b)(1) ("A proxy may confer discretionary authority with respect to matters as to which a choice is not specified by the security holder provided that the form of proxy states in bold-face how it is intended to vote the shares represented by the proxy in each such case.").
[76] Shareholder Communications Coalition Discussion Draft at 5.

providing proxy advisory services and the processes used by these firms to generate voting recommendations and in making voting decisions. The Coalition believes that proxy advisory firms have a considerable impact on the proxy process. Despite their large role, these firms generally remain unregulated and unsupervised and are often not transparent with regard to their standards, procedures, methodologies, and conflicts of interest.

In March 2010, two Coalition members, the Society of Corporate Secretaries & Governance Professionals ("Society") and the National Investor Relations Institute ("NIRI"), developed a Discussion Draft for the SEC, with recommendations for how best to improve the regulatory oversight and transparency of proxy advisory firms, in order to protect investors.[77] These recommendations were offered as a starting point for policy discussions about these issues.

The Coalition is supportive of these recommendations by the Society and NIRI, which are summarized below:

1. Regulatory Oversight of the Proxy Advisory Industry. Proxy advisory firms should be subject to more robust oversight by the SEC. At a minimum, all proxy advisory firms should be required to register as investment advisers, and the SEC should develop a unique regulatory framework for these firms under the Investment Advisers Act of 1940.[78]

SEC regulation should require conflicts of interest disclosure for proxy advisory firms. New SEC regulations should include minimum standards of professional and ethical conduct to be followed by the proxy advisory industry. One of these standards should ensure that a proxy advisory firm publicly discloses its relationship with any client who is the proponent of a proxy proposal or "vote no" campaign, whenever the proxy advisory firm is issuing a recommendation to other clients in favor of the same proposal or "vote no" campaign.

SEC regulation should address whether a proxy advisory firm should be allowed to offer consulting services to any public company for which it is providing recommendations on how investors should vote their shares. Alternatively, if a proxy advisory firm is allowed to offer consulting services to public companies, there should be

[77] Society of Corporate Secretaries & Governance Professionals and National Investor Relations Institute, Proxy Advisory Services: The Need for More Regulatory Oversight and Transparency (Mar. 4, 2010), available at http://www.shareholdercoalition.com/SCSGP_NIRI_Discussion_Draft_on_Proxy_Advisory_Services_3-4-10.pdf.

[78] See 15 U.S.C § 80b-1 et seq. For example, the Investment Advisers Act imposes a fiduciary duty on investment advisers to act in the best interests of their clients by fully disclosing all potential conflicts of interest. See SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 192-93 (1963) ("The Investment Advisers Act thus reflects ... a congressional intent to eliminate, or at least to expose, all conflicts of interest which may incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested.").

a complete and total separation of the proxy advisory business from all other businesses of a proxy advisory firm, including consulting and research services.

As the SEC develops a regulatory framework for proxy advisory firms, one possible avenue for guidance is the current and evolving regulation of credit rating agencies, also called Nationally Recognized Statistical Rating Organizations (NRSROs). A review of the SEC and staff actions with regard to NRSROs during the past several years shows that there are numerous and significant analogies with regard to problematic practices and regulatory improvements that should be considered for proxy advisory services.[79]

2. Public Disclosure of the Proxy Governance Models Used by Advisory Firms. Proxy advisory firms should be required to publicly disclose their internal procedures, guidelines, standards, methodologies, and assumptions for developing voting recommendations and voting decisions.

These disclosures would permit investors and independent third-parties to reconstruct, evaluate, and critique the advice rendered by proxy advisory firms.[80]

3. More Robust Due Diligence Regarding Proxy Vote Recommendations. Institutional investors with fiduciary duties to clients, beneficiaries, or shareholders should be required to exercise greater oversight responsibility with respect to any delegation, either expressly or implicitly, of their voting rights to a proxy advisory firm. The SEC and the Labor Department should consider establishing a more robust due diligence process for institutional investors, so that proxy voting enjoys a more important role in the investment process and within the fiduciary responsibilities of these investors.

As a part of their due diligence process for making proxy voting decisions, institutional investors should utilize, whenever appropriate, methodologies that evaluate the facts and circumstances of each public company and avoid "one-size-fits-all" or "check the box" methodologies.[81] Institutional investors should disclose these

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[79] See, e.g., http://www.sec.gov/news/press/2009/2009-200-factsheet.htm.

[80] Some commentators have urged that any public disclosures by proxy advisory firms use the XBRL interactive data format. The SEC should also require greater transparency of the internal procedures, guidelines, standards, methodologies, and assumptions used by proxy advisory firms to develop corporate governance ratings.

[81] See Millstein Center for Corporate Governance and Performance, Policy Briefing No. 3/Voting Integrity: Practices for Investors and the Global Proxy Advisory Industry (mar. 2, 2009), at 6, available at http://millstein.som.yale.edu/Voting%20Integrity%20Policy%20Briefing%2002%2027%2009.pdf. This paper discussed the underlying tension between an evaluation of the individual circumstances of a company and a more detailed, rules-based approach that requires fewer resources ("Debate in this area centered on whether it is more appropriate on the one hand, for investors and their advisors to develop general policies that are relatively flexible and then adjusted to fit the individual circumstances of the company under consideration; or on the other hand, to have far-reaching and detailed policies that generate consistent recommendations which allow possibly under-resourced proxy voting teams to vote without spending too much time considering the vote in the greater context of individual performance. When the proxy team is small, or governance resources sparse, this becomes a crucial issue.").

methodologies (including any voting guidelines provided to a proxy advisory firm) on their websites, for the benefit of their shareholders, clients, or beneficiaries. These disclosures also will help public companies evaluate their individual governance practices against the policies of their institutional shareholders.

4. Public Disclosure of Proxy Voting Recommendations and Decisions. Proxy advisory firms should be required to maintain a public record of all their voting recommendations and voting decisions. All institutional investors using proxy advisory services—including pension funds, hedge funds, and private equity funds—should publicly disclose the actual proxy votes cast by them (or on their behalf), if they are not already disclosing their voting records.

Proxy advisory firms should be required to disclose the underlying data, information, and rationale used to generate a specific voting recommendation or a voting decision. As noted earlier, when recommending in favor of stockholder proposals or "vote no" campaigns submitted or initiated by their clients, proxy advisory firms should be required to disclose their relationships with those clients.

5. Public Company Input into Advisory Recommendations. Proxy advisory firms should be required to allow public companies sufficient opportunity to review draft reports for accuracy and to respond to comments or recommendations with which they do not agree. Advisory firms also should disclose to their clients (and disclose publicly) any public company's response to their voting recommendations or analysis.

6. Public Disclosure of Voting Errors. Proxy advisory services should disclose publicly and promptly any errors made in executing or processing voting instructions on a particular proxy vote.

B. Empty Voting and Related Decoupling Issues: The Need for More Disclosure and Transparency

In its Concept Release, the SEC notes that the use of certain share lending and derivative strategies by hedge funds and other institutional investors have permitted a decoupling of voting rights from the economic ownership of corporate shares. This decoupling of rights creates the potential for manipulation of the proxy voting process, for the purpose of gaining some type of marketplace advantage. In a previous comment letter, the Coalition attempted to collect anecdotal evidence of these practices.[82]

These types of practices are very complex and difficult to evaluate from a policy perspective, especially without more information and analysis. However, the Coalition strongly supports the SEC's initial efforts in this area to update its disclosure rules under

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[82] See Letter from Niels Holch, Executive Director, Shareholder Communications Coalition, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, August 17, 2009, available at http://www.shareholdercoalition.com/SCCCommentLetter17August2009.pdf.

sections 13(d), 13(f), and 13(g) of the Exchange Act, to require that certain share-lending and derivative positions being created through new and evolving financial instruments are transparent to the marketplace through appropriate public disclosure filings.

IV. Conclusion

The Coalition agrees with the SEC that the U.S. proxy system is the "fundamental infrastructure of shareholder suffrage since the corporate proxy is the principal means by which shareholders exercise their voting rights."[83] After more than 25 years, the time has arrived to modernize and update this system. The SEC's Concept Release is very comprehensive and thoughtful description of a range of regulatory alternatives to improve this system for investors, issuers, and other participants. The Coalition looks forward to working with the SEC as it begins to implement some or all of these regulatory responses through its rulemaking process.

Sincerely,

Niels Holch

Niels Holch
Executive Director
Shareholder Communications Coalition

cc: The Honorable Mary L. Schapiro
The Honorable Kathleen L. Casey
The Honorable Elisse B. Walter
The Honorable Troy A. Paredes
Kayla Gillan, Deputy Chief of Staff
Meredith Cross, Director, Division of Corporation Finance
Robert Cook, Director, Division of Trading and Markets
Andrew Donohue, Director, Division of Investment Management
Henry Hu, Director, Division of Risk, Strategy, and Financial Innovation

[83] Concept Release at 43,020.