UnitedHealth Group℠
Dannette L Smith Secretary to the Board
9900 Bren Road East MN008-T700
Minnetonka, MN 55343
Tel 952 936 1316 Fax 952 936 3096

October 22, 2010

VIA ELECTRONIC MAIL: rule-comments@sec.gov

Ms. Elizabeth Murphy
Secretary
U.S. Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549-1090

Re: ***Concept Release on U.S. Proxy System***
File No. S7-14-10; RIN 3235-AK43

Dear Ms. Murphy:

UnitedHealth Group ("UnitedHealth") appreciates the opportunity to comment on the above referenced release (the "Concept Release") issued by the Securities and Exchange Commission (the "Commission" or "SEC") on July 14, 2010. We are a Fortune 25 diversified health and well-being company, with approximately 80,000 employees serving more than 70 million Americans. During 2009, we managed approximately $120 billion in aggregate health care spending on behalf of our constituents and consumers. We have approximately 1,098,000,000 outstanding shares of common stock listed on the New York Stock Exchange ("NYSE") and we are incorporated in Minnesota.

Executive Summary

We support the Commission's review of the proxy system and its efforts to ensure the system's accuracy and integrity. This Comment Letter addresses three major areas: The shareholder voting process, issuer-shareholder communication, and the role of proxy advisors.

A. The Voting Process.

The Commission should be under no illusions. The current shareholder voting system is flawed and, in close elections, there are often serious doubts as to the accuracy and integrity of the voting results. As explained below, UnitedHealth routinely suffers major occurrences of attempted over-voting and under-voting in connection with its shareholder meetings. However, as an issuer, we are unable to confirm shareholder votes by investors holding shares in street name, nor can we determine eligible shareholdings, given the prevalence of share lending. Further, when such voting irregularities are discovered and reported, there is no audit process available to assure that voting results are accurate.

Also, as the Commission itself has noted, voting should be done by those with the "economic interest"[1] and empty voting should be curtailed. We believe the Commission should study further the prevalence and impact of securities lending and other hedging activities on shareholder voting and adopt a regulatory solution to ensure that votes are cast by shareholders who have an equivalent economic interest in the issuer.

Accordingly, the Commission's efforts to study shareholder voting are timely and necessary. Reliable shareholder voting is essential for corporate governance to be meaningful and to accomplish the objectives of recent changes to SEC and NYSE rules.[2] We encourage the Commission to adopt rules that establish a fully auditable shareholder voting system, addressing the issues of over-voting and under-voting, and that permits votes to be confirmed.

B. Issuer-Shareholder Communication.

As discussed more fully below, the need for better communication has been recognized by both issuers and shareholders. Issuers should be permitted to communicate directly with all beneficial owners in connection with shareholder meetings and should be entitled to a list of beneficial owners for this purpose, as well as for reconciling shareholder votes. Concerns about providing data to issuers and the public can be adequately addressed through limiting disclosure of beneficial owner lists for use only related to an applicable shareholder meeting.

C. The Role of Proxy Advisers.

Proxy advisory firms currently wield significant influence over shareholder votes yet remain largely unregulated. The influence of proxy advisory firms is likely to continue to increase with the adoption of new initiatives regarding shareholder voting such as say on pay, majority voting, the elimination of broker voting, and proxy access. There is limited transparency into the voting recommendation process of RiskMetrics/ISS and no transparency into the voting recommendation process of Glass Lewis.

We believe the Commission should require proxy advisory firms' processes to be reasonably designed to ensure factual accuracy. At a minimum, this would include the opportunity for review and comment by the issuer on the accuracy of the facts underlying the applicable proxy advisory opinion. Each voting recommendation reports should also disclose arrangements with shareholders by which proxy advisory firm votes the shares exactly in accordance with its recommendations. This added transparency would help ensure that advisory firm opinions are not based on inaccurate facts and the extent to which other investors rely on the recommendations.

---

1 Securities Exchange Act Release No. 34-60215 (July 1, 2009) at 14.

2 These include implementation of majority voting provisions for director elections (which UnitedHealth adopted in May 2007), Commission rules on "proxy access" and guidance on shareholder proposals, amended NYSE Rule 452 which prohibits broker discretionary voting in uncontested director elections and executive compensation matters, advisory votes on executive compensation and increased use of shareholder proposals and "vote no" campaigns.

DISCUSSION

I. The Voting Process

A. ***A regulatory solution is needed to ensure accuracy and uniformity of the shareholder voting process.***

Accuracy in voting is fundamental to the integrity of the proxy system, yet attempted over-voting and under-voting occurs routinely, and end-to-end confirmation of shareholder voting is currently impossible. Because of share lending and the lack of a uniform method of vote allocation by brokers and banks, it is not possible for an issuer to conduct an internal or external audit of the accuracy of the voting process.

A company's corporate charter and bylaws, as well as applicable law, set forth the requirements for electing directors and corporate action by shareholder vote. If directors are elected or corporate actions approved by shareholders pursuant to these requirements, the directors are seated or the corporate actions become effective. An inability to verify shareholder votes may cast doubt as to whether corporate actions were properly approved or directors were properly seated, particularly in light of majority voting provisions and the forthcoming proxy access requirements.

This verification process is relatively easy with respect to shares held by beneficial owners who also are record holders. However, as an estimated 85% of shares are held in street name,[3] the federal securities laws provide issuers with no mechanism to verify whether the significant majority of shares have been voted consistent with the instructions of beneficial owners.

In connection with UnitedHealth's 2010 annual meeting of shareholders, we experienced seven separate instances, representing an aggregate of 840,238 shares, where street name holders attempted to cast votes in excess of their positions shown in DTC's records. In 2009, there were 11 instances of attempted over-voting representing an aggregate of 1,164,156 shares. In each of these instances, the inspector of election reported the attempted overvotes to Broadridge Financial Solutions, Inc[4]. Broadridge contacted the applicable bank or broker to work through the discrepancy, and ultimately no over-votes were counted to the best of our knowledge and belief. Because of the nature of the street name beneficial ownership system, however, we do not know whether the resolution by Broadridge and the banks and brokers ultimately resulted in the true beneficial owners at the record date receiving the correct number of votes.

In another instance, in 2008, our proxy solicitor identified a block of shares that had not been voted that was almost identical in size to the shares held by a very significant shareholder (representing tens of millions of shares). We contacted the shareholder to advise that we did not believe its shares had been voted, but the shareholder maintained it had voted its shares. We were unable to confirm whether this large unvoted block of shares belonged to that shareholder or to a different shareholder or shareholders, and these shares ultimately were not

---

[3] Order Approving Proposed Rule Change, as modified by Amendment No. 4, to Amend NYSE Rule 452 and Corresponding Listed Company Manual Section 402.08 to Eliminate Broker Discretionary Voting for the Election of Directors, Exchange Act Release No. 60215 (July 1, 2009) at 4, note 11.

[4] Broadridge was engaged by the banks and brokerage firms to perform certain back office functions related to beneficial holders. Broadridge obtains beneficial ownership records from their bank and brokerage firm clients and uses those records to distribute proxy materials either electronically or by mail to beneficial holders, tabulate the voting instructions as they are returned and ultimately issue votes to the inspector of election on behalf of the banks and brokerage firms.

voted at our 2008 meeting. If we had access to the identity of the holder(s) of these shares, we could have either advised the holder(s) of an error in the transmission of the vote or, if no error was found, engaged with the shareholder(s) who had not voted. Our inability to confirm the vote left us with significant concern that there was an error in the transmission of that shareholder's vote, but no way to address that concern.

We believe that our experience with over-voting and under-voting is not unique. Although none of these voting discrepancies altered the outcome of our vote, each involved a significant number of shares that could impact the result in a close or contested election. We strongly urge the Commission to study further the prevalence and magnitude of under-voting and over-voting to determine the extent to which these issues impact voting results.[5]

The Commission asked for comment regarding whether disclosure of broker-dealer allocation and reconciliation methods would be helpful to investors as the disclosure "could help investors to decide if a particular broker-dealer's method suits their investment goals." If the goal of a shareholder election is to ensure that shareholder votes are transmitted and recorded accurately, it is unclear how that goal is advanced by the disclosure of differing reconciliation methods or how this disclosure would allow investors to achieve their investment goals. Accordingly, we prefer a regulatory solution that mandates specific allocation and reconciliation methods. Such a method increases transparency in the system, and should also ensure accuracy by allowing the entire process to be subjected to internal or external audit.

B. ***The Commission should further study the impact of securities lending on shareholder voting and eliminate "empty voting." If empty voting is not prohibited, the Commission should require disclosure of an intent to vote borrowed shares.***

The volume of securities lending in the U.S. is immense. A 2004 study by The Bond Market Association estimated the total securities lending volume of all U.S. counterparties at $1.94 trillion at that time.[6] Given the growth, size and complexities of the securities lending market, we urge the Commission to further study the impact of securities lending on proxy voting. As part of this study, we believe the Commission should evaluate the prevalence of "empty voting", a practice whereby certain investors borrow (or purchase) shares prior to the record date and either hedge their entire economic exposure to the shares or sell the shares after the record date, thereby gaining voting rights without any economic interest in the matters under consideration. Studies have found that share lending accelerates on voting record dates, suggesting that certain investors enhance their voting power but may not hold those shares for long following the record date.[7]

Elimination of empty voting is also consistent with the Commission's position on NYSE Rule 452, where the Commission stated its belief that Rule 452 "should better enfranchise shareholders by helping assure that votes on matters as critical as the election of directors are

---

5 We note that the NYSE determined in at least one instance that the problem was substantial. See In the Matter of Deutsche Bank Securities, Inc., NYSE Request for Review of Exchange Hearing Panel Decision 05-45 (February 2, 2006), in which the NYSE found high incidence of over-voting over a multi-year period. This resulted in the over-voting of up to approximately 2.1 million shares on certain proposals.

6 Bond Mkt Ass'n, Repo & Securities Lending Survey of U.S. Markets Volume and Loss Experience at 3 (2005), http://www.sifma.net/assets/files/repoSurvey0105.pdf.

7 *See* Susan E.K. Christoffersen et al., *Vote Trading and Information Aggregation*, 62 J. Fin. 2897 (2007); *See also* Christopher C. Geczy et al., *Stocks Are Special Too: An Analysis of the Equity Lending Market*, 66 J. Fin. Econ. 241 (2002).

determined by those with an economic interest in the company, rather than the broker who has no such economic interest."[8] The case for elimination of empty voting is even more compelling as votes may be cast by those whose motives are not in the best interests of shareholders generally, as compared to brokers who likely would be objective. We observe that the Commission took steps in its new proxy access rules to ensure that only shares for which investors have both voting and investment power will count for purposes of the 3 percent nomination threshold,[9] and believe this was a prudent step towards addressing empty voting. We encourage the Commission to similarly implement additional changes to the proxy system to protect individual investors from the impact of empty voting, preferably by making it unlawful.

Lastly, we respectfully request that if empty voting is not prohibited, the Commission consider the merits of additional disclosure of an intention to vote borrowed shares. As noted above, the volume of securities lending is substantial, which provides investors with an avenue to accumulate shares for voting purposes and significantly impact voting results. Given the heightened significance of shareholder voting as a result of the Commission's newly adopted proxy access rules, NYSE Rule 452, and other matters, we believe investors in public companies should have enhanced disclosure regarding investors who accumulate a significant number of borrowed shares with the intention to vote them at an upcoming meeting. If investors understand the dynamics behind this kind of voting, they will be better informed in their decision of whether and how to vote.

C. ***Dual record dates may help address voting issues relating to securities lending but are highly susceptible to abuse by empty voters***.

A dual record date system allows issuers to have separate dates for determining who must receive notice of a shareholders' meeting and who can vote at the meeting. Establishing a voting record date closer to the actual meeting date is intended to help ensure that those entitled to vote at the meeting have a continuing economic interest in the company. Although such a move may help ensure that investors taking a longer-term interest in a company are able to vote, a dual record date system remains highly susceptible to abuse by empty voters. We therefore believe the Commission should consider ways to eliminate empty voting or mitigate its impact prior to considering any regulatory changes to facilitate dual record dates.

II. Shareholder Communication and Participation

A. ***The Commission should eliminate the OBO/NOBO distinction and allow issuers to obtain a list of all beneficial owners solely for the purposes of communications with shareholders in connection with shareholder meetings and vote confirmation.***

Due to changes in SEC and NYSE rules and corporate governance dynamics discussed above, it has become increasingly important for issuers to communicate with their owners. This is a perspective shared by issuers and shareholders.[10] The NYSE Proxy Working Group, which

---

8 Securities Exchange Act Release No. 34-60215 (July 1, 2009) at 14.

9 Securities Act Release No. 33-9136 (2010), at 75.

10 *See* Council of Institutional Investors Policy Section 2.6b (which provides in part that directors should seek shareholder views on important governance, management and performance matters). *See also* the NACD Blue Ribbon Report on Board/Shareholder Communications published in 2008. Participants in this report included a variety of shareholders, board members, academics and other professionals. *See also* Alan L. Beller & Janet L. Fisher, *The OBO/NOBO Distinction in Beneficial Ownership: Implications for Shareowner Communications and Voting* (Council of Institutional Investors), Feb. 2010, at 3, observing that regulatory and governance developments have "elevated the importance of shareowner communications in the context of voting and governance."

included among others representatives of issuers, brokers and institutional investors, noted in 2006 that "there is a significant need for more effective communications between issuers and shareholders" in light of majority voting provisions and elimination of broker voting of uninstructed shares in director elections. As noted recently in a report sponsored by the Council of Institutional Investors, however, "the OBO/NOBO distinction impedes company communications with beneficial owners."[11] We support elimination of the OBO/NOBO distinction and revisions to the Commission's proxy rules to allow issuers to communicate directly with all beneficial owners rather than having to communicate through intermediaries. Beneficial ownership information should be available to issuers for the limited purposes of communication with investors in connection with shareholder meetings and confirming shareholder voting at such meetings.

In adopting the OBO/NOBO distinction, the SEC cited investors' privacy interests as a key reason for the distinction.[12] With respect to retail investors, however, this does not appear to be a significant concern.[13] Institutional investors may have a stronger interest in maintaining anonymity, but institutions do not have the same privacy rights as individuals. Given the importance of an accurate and auditable shareholder voting system, public policy is best served by providing issuers with limited access to institutional beneficial ownership information, rather than creating new privacy rights for institutions that do not enjoy such rights in other contexts. Institutional investors' concerns can be mitigated by allowing issuers limited access to this information as of the record date and only in connection with the solicitation of proxies and the confirmation of voting at shareholder meetings. The infrequency of providing this information should largely alleviate legitimate institutional investor concerns (*e.g.*, that investment strategies can be tracked) while providing significantly more transparency and integrity to the voting process.

B. ***The Commission should take steps to enhance retail and individual investor participation.***

We support the Commission's efforts to enhance retail and individual investor participation. We believe that finding ways to make the proxy system more accessible to retail and individual owners will enhance their participation. In our experience, retail and individual investors participation in annual meetings is significantly lower than institutional participation. In 2010, 83% of shares held by our institutional investors were voted, but only 55% of shares held by retail investors, and 22% held by registered investors, were voted. We do not believe that the use of notice and access affected this vote turnout. We use a stratified notice and access mailing strategy, which includes mailing a full set of proxy materials to any shareholder who voted by mail or telephone in either of the last two years.

The Commission should consider ways to streamline the information presented to retail and individual investors. For example, it should consider allowing issuers to distribute a separate, "summary" proxy statement to shareholders with the proxy card. The SEC could provide guidance on the information to be included in the summary proxy statement. The full proxy

---

11 *Beller* at 1.

12 *See* Securities and Exchange Commission, *Report of the Advisory Committee on Shareholder Communications, Improving Communications Between Issuers and Beneficial Owners of Nominee Held Securities* (1982); *See also* Securities Exchange Act Release No. 34-19291 (1982).

13 In a 2006 survey by the NYSE Proxy Working Group, 86 to 95 percent of retail investors indicated a would elect NOBO status if a small fee was charged to maintain OBO status. *See* Investors Attitudes Study, commissioned by the Proxy Working Group to the New York Stock Exchange and prepared by Opinion Research Corporation (2006) at 4, http://www.nyse.com/pdfs/Final_ORC_Survey.pdf.

statement and annual report could be made available on the issuers' website and the summary proxy statement would direct the investor to the full proxy statement for additional information. Both the summary proxy statement and the full proxy statement would be filed with the SEC. A separate summary document would allow investors to focus on important details that they need to make voting decisions in an easily accessible format, while still having access to the full proxy statement if they desire further information.

We believe the Commission should revise the proxy rules to permit issuers to deliver a proxy card with their Notice of Internet Availability to Proxy Materials. As the full proxy materials remain available prior to any voting decision (at an address referenced in the initial Notice), the delivery of a proxy card with the initial Notice would encourage voting participation by retail investors without limiting the information upon which they base voting decisions. Any argument that delivery of the proxy card in this way will drive shareholders to vote without studying the issues is speculative.

Over the past several years, the length of proxy statements has increased dramatically. To make proxy statement disclosures easier to understand and to cross-compare, we suggest that the Commission mandate the specific order of required information in proxy statements, similar to the format of disclosure in 10-Ks and 10-Qs. We believe that the differences in the order of where information appears in the proxy statement among issuers make it more difficult for investors to find information, and compare it to prior years' disclosures or to the disclosures of other issuers.

C. ***The Commission should study further the experience of issuers with existing data tagging requirements and improve the SEC's systems prior to expanding data tagging to proxy-related materials.***

We urge the Commission to study further the experience of issuers under existing data tagging rules, and to address issues with the SEC's systems before extending these rules to proxy-related materials. For example, the XBRL conversion takes considerable time, which necessitates completion of the materials at least 48 hours prior to the filing date to allow for data tagging conversion and review. With the short timing demanded in preparing proxy materials, the inclusion of an XBRL obligation would further abbreviate companies' time to comply with their disclosure requirements.

We note that the XBRL tagging and conversion processes themselves are not yet mature. Errors in the XBRL conversion are common, requiring additional time and resources for the review. Errors also are common when uploading the data-tagged version of the document to the SEC's website, a process that takes also substantial time in itself. Further, we note that, in certain instances, the taxonomy is outdated and not intuitive.

We also are unsure whether investors would gain any significant incremental benefit from the data tagging of proxy materials. Retail and individual investors are likely to realize no additional benefit from the process. Enhancements to disclosure requirements over the last several years have resulted in greater comparability of information among issuers. Given the current issues with data tagging and uncertain benefits to be gained from data tagging proxy-related disclosures, we believe further study and systems improvements are warranted before the SEC takes any action in this regard.

III. The Role of Proxy Advisers

A. ***The Commission should expand the regulation of proxy advisory firms to better ensure accuracy of information published about issuers, as well as transparency of rating and recommendation methodologies.***

The influence of proxy advisory firms on proxy voting is undeniable. RiskMetrics/ISS, the largest proxy advisory firm, disclosed that it issued proxy research and vote recommendations in 2009 for more than 37,000 shareholder meetings across 108 countries,[14] and for more than 10,000 U.S. companies.[15] RiskMetrics also published in October 2008 that it represents over 2,200 institutional clients worldwide, which clients have over $25 trillion in equity assets under management.[16] Glass Lewis, another prominent proxy advisory firm, has said that its services cover more than 20,000 companies in 100 markets.[17]

Many proxy advisory firm customers have delegated actual voting authority to certain proxy advisory firms. RiskMetrics disclosed that in 2009 it voted 7.6 million ballots representing over 1.3 trillion shares on behalf of clients[18] and acknowledged in 2006 that approximately 15-20% of its clients utilized a service that automatically votes the clients' shares according to its recommendations.[19] We estimate that in conjunction with our 2010 annual meeting of shareholders, 16% of our outstanding shares were voted exactly in accordance with RiskMetrics' recommendation shortly after the issuance of the recommendation.[20] Other issuers have indicated similar experiences.[21] Yet despite the extent of proxy advisory firms' influence, they remain largely unregulated.[22]

---

14 RiskMetrics Group, Inc., Annual Report (Form 10-K) (Feb. 24, 2010) at 10.

15 RiskMetrics Group, *Proxy Research Services for Institutional Investors Worldwide*, http://www.riskmetrics.com/sites/default/files/GS1-Proxy%20Research%20Services.pdf.

16 RiskMetrics Group, *Experience Matters: A Guide to Selecting the Right Proxy Voting Partners* 9 (2008), http://www.riskmetrics.com/sites/default/files/SelectingTheRightProxyVotingPartner.pdf.

17 Glass Lewis & Co., *Proxy Paper Research and Custom Recommendations*, http://www.glasslewis.com/downloads/overviews/proxypaper.pdf.

18 *Supra* note 14.

19 Dean Starkman, *A Proxy Advisor's Two Sides: Some Question Work of ISS for Companies It Scrutinizes*, Wash. Post, Jan. 23, 2006, at D1 (citing a statement by John M. Connelly, then President and Chief Executive Officer of Institutional Shareholder Services, Inc.).

20 Estimated based on discussions with, and information provided by, UnitedHealth's inspector of election and proxy solicitor. In 2009, approximately 14% of our outstanding shares were voted exactly in accordance with RiskMetrics' recommendation shortly after of the issuance of those recommendations.

21 See *e.g.*, letter from Andrew Bonzani, Vice President, Assistant General Counsel and Secretary, International Business Machines Corporation, to the Commission, dated August 12, 2009, commenting on Release Nos. 33-9046 and 34-60089.

22 Proxy advisory firms that are registered as investment advisors are required to (i) make certain disclosures on Form ADV, (ii) adopt, implement, and annually review an internal compliance program consisting of written policies and procedures that are reasonably designed to prevent the adviser or is supervised persons from violating the Advisors Act, (iii) designate a chief compliance officer to oversee it compliance program, (iv) establish, maintain, and enforce policies and procedures reasonably designed to prevent the misuse of material non-public information, and (v) create and preserve certain records that the SEC's examiner reviews when performing an inspection of an adviser. *See* Advisers Act of 1940, §204A. *See also* Advisers Act of 1940, Rules 203-1, 204-2, and 206(4)-7.

Any new system of regulation of proxy advisory firms must better ensure the accuracy of information published by the firms. We note that RiskMetrics has allowed us to review reports for factual accuracy, which we believe has helped to ensure the accuracy of data underlying their voting recommendations. This should be an industry-wide practice, but it is not. Accordingly, other proxy advisory firms have issued reports on UnitedHealth that we believe contain factual omissions and misstatements. For example, Glass Lewis & Co.'s "proxy paper" for UnitedHealth's 2010 annual meeting of shareholders extensively but selectively summarized four-year old investigations, and omitted facts and conclusions of those investigations that were favorable to several directors. Glass Lewis used this incomplete and misleading information to support a recommendation to shareholders to vote against these directors. UnitedHealth, however, has no effective recourse against Glass Lewis for publishing this misleading information. Although we cannot know the prevalence of these kinds of issues, we believe that requiring all proxy advisory firms to allow issuers the opportunity to review the factual accuracy of reports in advance, will help prevent factual misrepresentations and provide shareholders a more reliable basis to form decisions. Such an approach would not interfere with the rendering of an independent objective opinion by the proxy advisory firm, but opinions should not be based on an erroneous or misleading recitation of facts.

We also believe it is necessary for beneficial owners to better understand the extent of influence of proxy advisory firms prior to the deadline for voting as it may be material to their investment and voting decisions. This would be best accomplished by requiring additional disclosure in the report containing the proxy advisory firm's voting recommendation. The disclosure would set forth the aggregate number of shares for which the proxy advisor has an arrangement to vote those shares exactly in accordance with the proxy advisory firm's recommendations. We believe this information is largely available to proxy advisory firms. This improved transparency in the voting process will greatly enhance integrity in the voting process.

* * *

We appreciate the opportunity to comment on the Concept Release and the Commission's consideration of the comments provided herein. If you need further information or would like to discuss our comments, please contact me at 952-936-1316.

Respectfully submitted,

Dannette L. Smith

Dannette L. Smith
Secretary to the Board