

# NBIM

Norges Bank Investment Management

The Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

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### COMMENTS ON THE SEC'S CONCEPT RELEASE ON THE U.S. PROXY SYSTEM

We commend the SEC for its effort to communicate with all involved parties, including the end-users of the US proxy voting systems, through the Concept Release on the U.S. Proxy System and for welcoming comments on any concerns related to the proxy process.

Norges Bank Investment Management (NBIM) is managing the Norwegian Government Pension Fund Global and has assets of \$500 billion under management. Of this, \$100 billion is held in equity in 2,100 U.S. companies, in which we have a 0.66 percent holding on average. The U.S. is one of 58 equity markets in which we have currently invested. As a shareholder in the attractive U.S. stock market we actively vote our shares, engage in dialogue with companies and communicate our corporate governance principles as published on our web site [www.nbim.no](http://www.nbim.no). We have experiences and viewpoints that we think are of interest to the SEC in its consideration of the future proxy system. In this letter we will therefore give a combination of general comments as well as certain more specific responses to questions raised.

Overall, there are a number of good features in the US proxy voting system. The system is well understood, works in a uniform manner and provides access to proxy voting for shareholders. Votes generally get through to the shareholder meeting, and issuers now publish vote results within few working days. Shareholder rights have been affected positively by the removal of broker votes on board elections, the gradual introduction of the majority vote standard and one-year board terms, and the declining prevalence of poison pill arrangements. A continued development in this direction is expected and appreciated.

We appreciate that the SEC has recently moved to allow shareholders access to the companies' distribution of AGM documents for alternative board candidates ('proxy access'). However, we believe a broadening of the applicability of the rule would be beneficial. The solution so far chosen has such limitations on its possible use that the costly and confrontational 'proxy fight' may still need to be chosen to provide a real choice between board candidates.

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It is of importance that the regulatory framework provides protection for minority shareholders in takeover situations. Such protection can be further strengthened. One approach would include studying the rules on minority buyouts in other relevant markets.

In an increasing number of U.S. companies the board is being empowered with a chairman separate from management. This is something we see as a prerequisite for a board to be fully accountable to its shareholders and at the same time fully able to oversee management. We appreciate the new SEC requirement that companies explain the choice of chairmanship model. A general transition to board chairmanship independent of management should be further encouraged.

The dispersed ownership structure typical for U.S. companies means that strong corporate governance must play an important role in bridging the distance to shareholders and ensuring accountability of management. This challenge can partially be remedied by an improvement of the proxy voting system. We do, however, support the SEC in addressing these broader issues alongside the improvement of the mechanics of vote execution that is the primary focus of the concept release.

We have below commented on some specific issues. The comments are organized under the categories used by SEC in the release.

### **Accuracy, Transparency, and Efficiency of the Voting Process**

#### *Vote receipt*

Investors are currently not receiving confirmation that votes were correctly recognized at the shareholder meeting. Receiving a confirmation would provide an audit trail and represent a control assurance. We recommend that the SEC seeks to facilitate the production of such a confirmation back to the shareholders. The SEC should provide for this standard while at the same time ensuring neutrality and competition in the service chain involved.

#### *Electronic communication*

Companies should strive for putting in place a practical web based system for shareholder participation in proxy voting and communication. This would allow the removal of the distribution of paper copies of proxy statements and proxy cards in the mail. Such change should be coupled with a requirement that companies announce the date of the shareholder meeting at least a year in advance, for instance in the annual reports and on the web site.

The date at which holdings are recorded for the purpose of vote allocation should be announced at the same time as the meeting date. It would then not be necessary to mail shareholders to inform of these dates, and hence the need for an early record date could be reconsidered.

### **Communications and Shareholder Participation**

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### *Communication between shareholders and the company*

We expect companies to communicate well with their shareholders, not only via official reporting and the proxy statement, but also through informal discussion. We recognize that the lack of complete knowledge of the shareholder register on the part of the issuer may hamper the effective communication between the issuer and the shareholder, but this does not fully explain today's deficiencies in communication.

We think that both investors and companies in the U.S. can often do more than today to facilitate constructive communication, particularly at board level.

By systematically reaching out to their major shareholders companies will increase mutual understanding of governance and expectations. By doing so, they can reduce the costs and distractions associated with the more formalistic and sometimes aggressive means of communication, such as shareholder proposals. We encourage the SEC to study whether existing rules and regulations, or commonly used interpretations, unduly inhibit such communication with shareholders.

Also, as mentioned above, the communication could be encouraged by a further strengthening of shareholder rights.

### *Tagging of information*

We support the suggestion that issuer information, such as the contents of the proxy statement, be tagged to enable systematic collection and analysis. Likewise, data on individual directors should be tagged. Such tagging will advance systematic data collection and analysis, and can help reduce costs involved.

## **Relationship between Voting Power and Economic Interest**

### *Time span between vote allocation date and meeting date*

The concept release discusses the "de-coupling" of voting rights from economic exposure that arises because the number of votes per shareholder is determined a long time (typically up to 60 days) ahead of the shareholder meeting. We believe the most relevant remedy for reducing this problem is bringing the record date for vote allocation much closer to the meeting date. Other national markets often have a record date just a few days ahead of the meeting, which seems principally and practically a better solution. Such a reform should include announcing meeting dates much earlier, as mentioned above.

### *Multiple exposures*

The release furthermore discusses a number of situations labeled possible "empty voting", such as explicit and implicit hedges to equity positions, shareholdings in both the target company and the acquirer in a take-over situation, share lending, corporate debt investment and derivatives hedges. Disclosure regimes and vote restrictions are among options mentioned by the SEC for such situations. If the SEC chooses to pursue these issues, we would encourage a close examination of the risk that such measures will lead to non-

productive compliance challenges and reduced vote participation by diversified institutional shareholders.

*Proxy research services*

It is important to ensure sufficient competition in the market for proxy research and advice. As a client of such firms we are focused on maintaining and expanding the quality of the services and ensuring the integrity of the recommendations. We believe that ensuring competition is the best avenue to avoid the risk that any one research firm will exercise unreasonable influence over vote outcomes. We also note that there is currently significant competition in this field of services, as evidenced by the way the supply side of the landscape has evolved over the last decade.

We understand that vote recommendations by proxy research services firms may sometimes be a controversial focal point for issuers. In one way this is understandable because these recommendations generally express views commonly held by client institutions on some contentious issues. Our experience is that proxy research firms do put considerable effort into ensuring that their standard policies are well aligned with views shared by their clients. Along with other clients we have been contributing to this evolutionary process.

In our voting we are applying an individual vote policy that deviates from the standard policies of proxy research firms. Other institutional investors have separate policies. Our vote procedure includes reviewing competing proxy research as well as internal and external research and direct company contact. Based on our procedures, and also on the information we have of the procedures of other institutions, we believe that concerns that any proxy research firms "are controlling or significantly influencing" vote outcomes are likely oversimplified and unfounded.

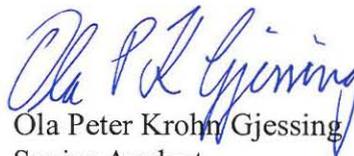
We are concerned that the suggested regulations of proxy research firms may drive up costs and barriers to entry. Suggestions that the proxy research firms must publish their analysis and allow companies a right to review research and recommendations represent risks to the independence and efficiency of the services. In effect we see a risk that the indicated regulatory measures will turn the proxy research firms into less effective agents for shareholders in their goal to promote better corporate governance standards. We believe that the sophistication of clients will contribute to a continuing gradual improvement of the services, as has been the case in history.

We are available should the SEC wish to explore these issues in more detail through discussion in person.

Yours sincerely,



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