By web submission: www.sec.gov

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

November 11, 2010

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

Dear Ms. Murphy,

I am a 40 year veteran of the securities industry, now writing on behalf of myself and other individual investors, concerned about the integrity of the U.S. proxy system. In particular we are interested in protecting the rights of shareholders that have signed hypothecation agreements and unknowingly given up their right to vote or otherwise control their shares.

Background

Whenever an investor opens a margin account with a brokerage firm that investor is required to sign a hypothecation agreement that gives the firm broad rights to loan out those shares to other parties.

The original purpose of this arrangement was to allow the brokerage firm to put the shares up as collateral at a bank and borrow the money that they were lending to their margined client. Thus, the hypothecation had a valid commercial purpose and benefited all parties.

But it was soon discovered that this broadly written hypothecation agreement could be used not only for bank borrowings but to lend the client's shares to other clients that wanted to short the securities, and effectively bet against the first client. This is definitely not in the first client's best interests but it is now a common practice. Moreover, it is rarely or ever specifically disclosed and most customers are unaware that their shares are being loaned out to short sellers.

Ideally, investors should be able to "opt in" to any program that allows their shares to be loaned out for any other purpose than supporting the margin loan. Or at the very least brokerage firms should be required to disclose when they are borrowing shares from one client to loan to another client that is a short seller betting against the first client. (Ref, Goldman case)

Originally, before the automation of the brokerage back office, most people held their own certificates and voted their own shares. Thus there was a natural throttle on the amount of stock loan activity and short selling that occurred in the marketplace. Few individuals would ever loan their shares to another investor to bet against them.

With the electronic back office, the commingling of securities in street name, and the trend towards a certificate-less system (all of which have benefits but obfuscate ownership rights), the ability to borrow shares (without the knowledge of the shareholder) has become easier than ever. In a system where physical delivery is rarely required short selling activity has effectively lost its natural regulator; a concerned shareholder that carefully controls the use and distribution of his or her certificates.

While the benefits of the paperless back office are many, the proxy reforms now being considered by the SEC should recognize the few drawbacks and return protective rights to the shareholder by simplifying the hypothecation agreement so that shares cannot be loaned out to shorts without the shareholder's approval. Beyond protecting the shareholder such a provision would naturally rein in the amount of short selling (without any uptick rule or artificial means). It would also cure any potential of over voting that can be seen from the following example:

Example

If a company has 100 million shares outstanding, and 10 million of those shares have been borrowed from the original shareholders and loaned to short-sellers, who have in turn sold them to other new investors, so that investors now collectively own 110 million shares of record, how many proxies will be sent out in a perfect world?

A. Proxies on just 100 million shares? (The official number of shares outstanding on the issuing company's books, as reported to the SEC.)

B. Proxies on 110 million shares? (The official number of shares purchased on the open market and now owned by investors, as stated on their brokerage account statements.)

If one answers A, then the issuing company's rights are protected but how are the rights of the owners of the extra 10 million shares represented? And how does one determine who are the legitimate versus none legitimate owners?

If one answers B, then the rights of the shareholders of record on the brokerage firm's books are protected, but how are the rights of the issuing company preserved? In this situation there are more shares owned by investors then the company has authorized as outstanding shares, and therefore more votes to be cast than authorized by the company.

In theory brokerage firms with transfer agents are supposed to reconcile the differences and tell the clients that are on margin that they cannot vote their shares because such shares have been loaned to another shareholder. In practice they do not do this because there are usually enough complacent shareholders that do not vote that the brokerage firm effectively allows everyone that wants to vote to cast such vote. But a system that relies on complacency is a system destined for trouble.

The real problem is that current practice does not protect the rights of everyone that thinks they own shares when these shares amount to more than the official number of shares on the company's books. And many investors are having their shares loaned out to short sellers that bet against the owners without the owner's knowledge.

Solution

Obviously we cannot go back to a time when everyone had physical control of his or her certificates but we must at least replicate those basic shareholder rights. And if a company's books show there are only a certain number of shares outstanding then that is the maximum amount of votes cast and those people that loaned their shares to the shorts give up their voting rights.

It is recommended that the best way to accomplish this would be to:

1.Simplify the hypothecation agreement so that it only allows the brokerage firm to lend shares for collateral purposes (the original intent).

2.If the brokerage firm wants to loan a customer's shares to a short seller that brokerage firm must disclose this fact and get the customer's permission, and the customer must acknowledge that voting rights are attached to those shares.

Sincerely

Walter Cruttenden
Retired Chairman and CEO of Cruttenden Roth