November 24, 2010

Elizabeth M. Murphy, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.W.
Washington, D.C. 20549

Re: Concept Release on the U.S. Proxy System, File No. S7-14-10
Regarding Communications and Shareholder Participation (Section IV)

Dear Ms. Murphy:

The Society of Corporate Secretaries and Governance Professionals appreciates the opportunity to respond to the Securities and Exchange Commission's Concept Release on the U.S. Proxy System, SEC Rel. No. 34-62495 (July 14, 2010) ("Concept Release"). As one of several letters that the Society has submitted and will be submitting in response to the Commission's requests for public comment, this letter focuses on issues raised in **Part IV of the Concept Release relating to Communications and Shareholder Participation**. In preparation for this and other comment letters, the Society surveyed its members to collect data regarding a number of issues ("Society Concept Release Survey" or "Survey"). The results of the Survey are attached to the Society's letter dated November 23, 2010 focusing on Part III of the Concept Release.

Founded in 1946, the Society is a professional membership association of over 3,100 attorneys, accountants and other governance professionals who serve more than 2,000 companies of almost every size and industry. Society members support the work of corporate boards of directors and their committees, as well as the executive management of their companies, on corporate governance and disclosure matters. Our members generally are responsible for their companies' compliance with securities laws and regulations, corporate law and stock exchange listing requirements, including (but not limited to) those applicable to the annual and other meetings of shareholders.

Introduction

The Society urges the Commission to consider carefully the benefits and costs (including out-of-pocket costs as well as increased regulatory and logistical burdens) to all participants in the proxy voting process (including the ultimate beneficiaries of that process, the shareholders), that may result from eliminating the regulatory distinction between Non-Objecting Beneficial Owners ("NOBOs") and Objecting Beneficial Owners ("OBOs"), either completely or on an annual basis in connection with the annual meeting of shareholders for the election of directors.

I. ISSUER INTEREST IN IDENTIFYING AND COMMUNICATING WITH BENEFICIAL OWNERS

The Society strongly encourages the Commission to explore ways in which it can expand the opportunities for companies and shareholders to communicate with one another through the removal of unnecessary regulatory impediments to such communication. Consistent with comments submitted to the Commission by other participants in the proxy voting process, companies' interest in communicating with shareholders has grown in recent years as such communications have become an increasingly important component of good governance.

Most the Society members responding to our Survey (65%) now communicate informally with their companies' shareholders in connection with proposals that are, or are expected to be, included in their proxy statements.[1] Of this respondent group, almost two-thirds (64%) typically only communicate with institutional shareholders, while nearly one-quarter (24%) communicate with both institutional and large retail shareholders. A smaller number of respondents (12%) communicate with a broader shareholder group.[2] Of the respondents who typically only communicate only with institutional holders, 95% say they do not communicate with a larger number of shareholders due to a lack of necessity, cost, complexity of the communications system, or a combination thereof.[3]

A substantial number of respondents (41%) indicated that they would likely continue with their current communication practices and therefore would likely not communicate more frequently with shareholders or with a larger portion of shareholders if they were provided with the names and addresses of all their shareholders.[4] However, one-third of responding members indicated that they would likely communicate informally with all or a significantly larger spectrum of shareholders in the future if they were provided with the names and addresses of all of their shareholders, without exception.

Of the Survey respondents who would expand informal shareholder communications if given access to the names and addresses of all of their shareholders, 37% indicated that they would typically rely on their own internal resources for this purpose, while 15% would typically choose to engage an intermediary. But the largest group of respondents (48%) were not sure how they would expand their informal shareholder communication efforts (*i.e.*, internally vs. hiring an intermediary).[5]

About one-quarter of the Survey respondents (26%) expressed unconditional support for the elimination of the NOBO/OBO distinction to allow issuers to obtain contact information for all shareholders.[6] But most respondents (67%) conditioned their support for obtaining contact information for all shareholders on either or both of two significant, and

[1] See responses to Survey Question No. 36.
[2] See responses to Survey Question No. 37.
[3] See responses to Survey Question No. 38.
[4] See responses to Survey Question No. 40.
[5] See responses to Survey Question No. 41.
[6] See responses to Survey Question No. 42.

currently unknown, variables – that a modified system would not result in materially higher issuer costs and/or would not materially increase the logistical or regulatory burden on issuers.[7] A few respondents (7%) were opposed to the elimination of the NOBO/OBO distinction.

The Survey also explored our members' interest in using NOBO lists to communicate with street-name holders in connection with a non-proxy related communication. While there is an apparent interest in obtaining the names and addresses of all beneficial owners, as previously noted, it seems that virtually all respondents (90%) never, or rarely, request a NOBO list from securities intermediaries or their agent to enable such informal communications.[8] (About 9% of respondents do so occasionally, but less than 2% do so frequently.) In explaining why this is so, most respondents (78%) indicated that a NOBO list was not usually necessary to meet their own company's objectives; the remainder identified cost and/or complexity as the reasons.[9]

However, the Society has had informal discussions with some of our members whose companies have been involved in critical, high-stakes situations (*e.g.*, proxy contests, "just vote no" campaigns, meetings with special quorum needs, or major transactions), particularly those whose companies have a high percentage of retail owners. Those members have a strong interest in obtaining beneficial ownership information for all of their shareholders. Those members indicated that they would likely use the information to communicate with more shareholders if the information were more readily available. The Society believes that member interest – albeit low at this point in time—may increase over time, at least for proxy voting purposes.

Turning to the separate question of whether responding members would prefer to send proxy materials directly to OBOs as well as NOBOs using their own distribution agent – which is not permissible under the current proxy rules -- a substantial majority (79%) would do so if permissible, but only if it would not cause materially higher costs, delay in receipt of proxy votes, increased logistical or regulatory burden, or all three.[10] Other members (15%) responded that they would do so without condition. Only a small number of respondents (5.63%) objected to such a direct access system.

Given these Survey results and the changing governance environment (*e.g.*, advisory votes on compensation), the Society urges the Commission to examine carefully possible changes to the present NOBO/OBO system. Our members are cognizant that in any rules analysis, potential costs must be weighed against the potential benefits. We believe if there were more and better information about these costs and benefits, our members would be in a better position to comment on how they would operate under a revised system.

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[7] See responses to Survey Question No. 42.

[8] Approximately 54% of respondents indicated that they never communicate with NOBOs using a NOBO list for communications not required under the proxy rules, and approximately 36% do so rarely. A few respondents (about 9%) do so occasionally. See responses to Survey Question No. 43.

[9] See responses to Survey Question No. 46. A total of 8% of respondents identified both factors, while 6% pointed to overall costs and another 4% pointed to complexity.

[10] See responses to Survey Question No. 47.

II. INVESTOR PRIVACY INTERESTS REMAIN A CONCERN

Nearly one-half of Survey respondents (45%) support shareholder privacy rights. Approximately half of those (23%) believe unconditionally that shareholders should continue to maintain the privacy of their identities and share positions vis-à-vis the companies in which they invest. The balance (22%) believe that shareholders who opt for OBO status should be discouraged from doing so by imposing a fee or requiring extra paperwork.[11]

On the other hand, almost the same number (46%) do not support shareholder privacy rights – with 25% against unequivocally, and 23% against because they believe that the system should not impose burdens that disproportionately impact retail shareholders relative to institutions, which are deemed to have more resources to bear such burdens. This nearly even split of opinion on investor privacy issues suggests that issuers are mindful of privacy concerns, but are not in agreement as to how they should be taken into consideration in any potential changes to the proxy distribution system.

III. LIMITED ISSUER ACCESS TO BENEFICIAL OWNERSHIP INFORMATION – ABO MODEL

According to the Concept Release, some have suggested that a more effective balance could be struck between companies' need (or preference) for direct communication with all shareholders and shareholders' privacy interests by adopting a new regulatory scheme that would allow issuer (and shareholder) access to beneficial ownership information only on the record date for annual meetings for the election of directors.[12] The Commission has requested comment on this "annual beneficial owner" or "ABO" concept.

Survey respondents who expressed an opinion were almost evenly split on whether they would support such an "ABO" regime. While approximately one-third (33%) of respondents were in favor, another third (31%) were opposed, and slightly more than one-third of the Survey respondents (37%) were uncertain as to whether or not they could support such a system.[13] Most respondents (46%) thought such a system would lead to increased proxy solicitation costs, while 43% were not sure. Only 11% believed that such a system would not result in higher costs to issuers. Based on issuer concerns about the potential costs of implementing such a system, the Society encourages the Commission to further evaluate this option with a particular focus on such costs.

IV. LOSS OF BROKER-DEALER DISCRETIONARY VOTE AND ISSUER QUORUM CONCERNS

While a significant majority of our Survey respondents (75%) neither expect nor have experienced to date a failure to reach a quorum at any shareholder meeting due to the elimination of the broker discretionary vote in uncontested elections of directors, one fourth

[11] See responses to Survey Question No. 50.
[12] Concept Release at IV.A.2.
[13] See responses to Survey Question No. 52.

of the respondents had included a "routine" proposal on the ballot which enabled them to have the benefit of the broker discretionary vote for the purposes of measuring quorum at their meetings.[14] Accordingly, we believe that if the Commission were to prohibit broker discretionary voting for the ratification of auditors, quorum concerns would increase significantly.

In particular, timing is a critical issue. Issuers with a significant majority of shares held through brokers often meet quorum requirements upon submission of the broker discretionary vote only 10 or 15 days before the annual meeting date. Without the broker discretionary vote, issuers may not know if a quorum will be achieved until just before an annual meeting date and may feel compelled to incur significant costs to ensure a quorum is reached. Even if a quorum ultimately is achieved, an issuer already may have determined to postpone an annual meeting to avoid the risk of attempting to convene a meeting without a quorum. The costs to issuers, and shareholders, associated with postponing an annual meeting could be significant.

Our Survey respondents were divided in their opinions regarding whether their need to communicate with shareholders would increase as a result of the recently adopted shareholder proxy access rules when combined with the elimination of broker discretionary voting in uncontested director elections. The largest number of respondents (41%) was not sure whether these changes would increase their need to communicate with shareholders, and they indicated they would only adjust their current approach to communications with shareholders if necessary. However, one-third of the respondents indicated they would expect to need to communicate with a significantly greater spectrum of shareholders. Based on the results noted above, we believe that in the case of a close vote, which is more likely with shareholder proxy access, issuers will determine they need the ability to communicate directly with OBOs, as well as NOBOs. In addition, in the case of a special meeting, the ability to communicate directly with OBOs may make the difference in achieving a quorum for that meeting.

V. PASS-THROUGH VOTING BY BENEFICIAL OWNERS VIA THE USE OF INTERMEDIARY OMNIBUS PROXIES

Over half of our survey respondents (52%) would support, and approximately one-third (32%) would oppose, a system under which whereby securities intermediaries would grant an omnibus proxy to their beneficial owners and identify those owners to the issuer. However, of the 52% that would support an omnibus proxy system, only 9% would do so unconditionally, while 43% would support only if issuer costs would not increase more than minimally and/or that a new system would not materially increase regulatory or other burdens for issuers. Approximately 16% of the respondents were unsure.[15]

One effect of an omnibus proxy system would be to enable companies to transmit proxy materials (as well as other corporate communications) directly to all beneficial owners (except perhaps those owners who elected to pay for establishing a nominee account) using

[14] See responses to Survey Question No. 22.
[15] See responses to Survey Question No. 21.

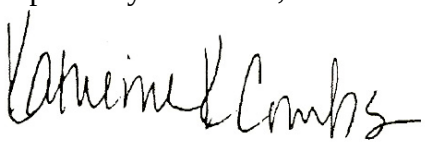
their own distribution agent. A very large majority of Survey respondents (a total of 94%) would support rule amendments that would permit direct proxy delivery; however, most (81%) of the respondents would support an omnibus proxy system only if it would not materially increase costs, logistical or regulatory burdens, and/or would not delay obtaining the vote.[16] Based on these results, issuers are concerned about the potential costs and disruption that may result from implementing an omnibus proxy system. The Society encourages the Commission to further evaluate this option with a particular focus on such concerns.

An omnibus proxy system would eliminate all broker-dealer discretionary voting, because intermediaries would simply be removed from the proxy delivery and voting processes. As noted above, one quarter of Survey respondents indicated that they did not expect, nor have experienced to date, a failure to reach a quorum only because the company included a "routine" proposal on the ballot which enabled broker discretionary votes to be counted for quorum purposes. Without a broker discretionary vote, these companies might risk failure to obtain a quorum absent additional regulatory changes designed to facilitate retail investor voting, such as "client directed voting", education initiatives and more cost-effective issuer "get-out-the-vote" campaigns aimed at all beneficial owners.

Conclusion

We hope the data and analysis provided in this letter is helpful to the Commission as it considers the issues raised in the Concept Release. We appreciate the opportunity to comment on this important proposal and would be happy to provide you with further information to the extent you would find it useful.

Respectfully submitted,



Chair, Interim CEO & President
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[16] See responses to Survey Question No. 47.