



CENTER FOR CAPITAL MARKETS

C O M P E T I T I V E N E S S

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September 20, 2010

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

**Re: Concept Release on the U.S. Proxy System
File Number S7-14-10
RIN 3235-AK43**

Dear Ms. Murphy:

The U.S. Chamber of Commerce (“Chamber”) is the world’s largest business federation representing the interests of more than three million companies of every size, sector, and region. The Chamber created the Center for Capital Markets Competitiveness (“CCMC”) to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy. It is an important priority of the CCMC to advance an effective and transparent corporate governance environment. To achieve this objective, the CCMC has called for the promotion of responsible innovation, the elimination of regulatory dead-zones, and abolishing gaps in regulatory coverage.

Over the past year the Securities and Exchange Commission (“SEC”) has promulgated rules on proxy access primarily to the benefit of large investors. However, it should be noted that the SEC is charged with serving as the advocate for *all* investors.

The CCMC has advocated for:

- a broader approach to advance the interests of all investors through the use of innovation to empower retail shareholders¹ and

¹ See September 16, 2009, letter from David Hirschmann, President and CEO of the CCMC to SEC Chairman Mary Schapiro on empowering retail shareholders in the corporate voting process.

- the creation of a supervisory regime to establish procedures for transparency and disclosure in the operation of proxy advisory firms.²

To date, action has not been taken in either arena. A failure to empower retail shareholders will create unequal classes of investors with differing rights and abilities to provide input, ultimately constraining the dialogue between investors and management and potentially harming the long-term value of companies. The situation would be further aggravated by a failure to supervise proxy advisory firms, which may lead to improper influence that can undermine the integrity of proxy voting systems. A failure to act in these areas will harm all investors and adversely impact the value of companies in a fragile economic time when we cannot afford it.

The CCMC welcomes this concept release and urges the SEC make these issues a priority. These issues are simply too important to be lost in the midst of Dodd-Frank Act rulemakings.

Accordingly, the CCMC requests that the SEC take the following actions:

- 1. The SEC should provide interpretive guidance to support innovations such as a Client Directed Voting (“CDV”) model;**
- 2. Institution of the CDV model, or similar mechanisms to empower shareholders, should be complemented by enhanced communications technology, including shareholder forums, virtual meetings, investor network, and increased access to educational resources;**
- 3. The SEC should launch a robust investor education initiative to integrate the CDV model in the market and improve retail shareholder participation;**
- 4. The SEC should put into place an appropriate supervisory regime to ensure the transparent development of voting policies; and**

² See August 5, 2010, letter from Tom Quadman, Vice President of the CCMC to SEC Chairman Mary Schapiro on regulating proxy advisory firms. This letter was filed as a comment during the comment period for the concept release. While this letter will also refer to proxy advisory firms, the CCMC continues to stand by the comments made in the August 5, 2010 letter, and the two letters should be read together.

- 5. Preserve the fiduciary duties of directors through the disclosure and transparency regarding pools of potential director nominees compiled by investors, such as the California Public Employees Retirement System Diverse Director Database (“CalPERS 3D program”).³**

Our concerns and suggestions are discussed in detail below.

Discussion of Retail Shareholder Issues

Increasing retail shareholder voting should be an immediate priority for the SEC and all participants in the proxy voting system. To this end, we support the implementation of the proposed Client Directed Voting (“CDV”) model in which investors would be permitted to provide brokers and other intermediaries with standing instructions on matters to be voted on at companies in which they own stock. This model can be complemented by greater use of Web-based communication tools and enhanced educational resources to engage shareholders. We believe these changes would increase retail participation in corporate voting to benefit the proxy process, corporate governance, and our capital markets.

Historically, less than one-third of retail shareholders vote their proxies while institutional shareholders tend to vote at a rate of 90% or more. We believe that many retail investors today are simply discouraged by the enormity of the task confronting them every proxy season. It simply is not realistic to assume that any individual investor will have the time or inclination to read thousands of pages of proxy materials, vote dozens of voter forms that arrive seriatim throughout proxy season, and investigate companies or proposals that may be of particular interest. We believe that it is realistic to assume that an individual shareholder will take a few minutes to set default choices consistent with how he or she would typically votes, and then allocate time to companies or issues that deserve more attention. This tracks in some respects the approach taken by most institutional investors and their use of proxy advisors to assist their voting.

³ See July 22, 2009, letter from Tom Quaadman, Vice President of the CCMC, to Chairman Mary Schapiro regarding transparency and accountability in the CalPERS 3D program.

Retail shareholders generally invest in companies with an interest in building long-term growth in their investment. There should be a level playing field between institutional and retail investors to ensure that the interests of retail investors are adequately represented. The CCMC believes that a coordinated initiative, with the participation of public and private constituents, could leverage a Web-based communications technology to increase retail shareholder participation in the near term.

I. The Commission should provide interpretive guidance to support innovations such as a Client Directed Voting model

The NYSE's Proxy Working Group ("PWG") studied a range of recommendations to enhance efficiencies in the proxy voting system. The PWG reviewed the CDV model in which investors would be permitted to provide brokers and other intermediaries with standing instructions on matters to be voted on at companies in which they own stock.

Attributes of this model include:

- Brokers and bank custodians using standardized forms to elicit standing voting instructions from their clients on certain appropriate proposals.
- At the time of proxy solicitation each investor would receive a voting instruction ballot pre-marked with their applicable standing instructions.
- Investors would continue to receive the same proxy materials and other disclosures they receive today.
- Investors would always have the ability to override the standing instructions and give different voting instruction to the broker after receiving the proxy materials in question.

There are several advantages to using the CDV model. It would decrease the related time and other costs of retail participation in the proxy voting process. This

would allow retail shareholders to invest a portion of time in advance of the proxy season to set their standing instructions in accordance with their investment strategy. Shareholders could then devote additional time on a case-by-case basis to particular companies or proposals, should the circumstances warrant special attention.

Skeptics contend that the CDV model would dissuade shareholders from making "informed" investment decisions by allowing them to submit standing instructions in advance without full information of the matters to be voted on. In contrast, we believe that the CDV system will encourage investors to invest additional time in making informed voting choices.

We are also concerned that an "informed shareholder" standard is an overly subjective standard that would be as impractical to administer. There can never be assurances that voters in any electoral process will be completely "informed" as to their favored candidate's position on each and every policy issue. We are strongly opposed to the SEC setting a higher "informed shareholder" standard for retail investors that for institutional investors who already rely on third party recommendations to vote their shares. Indeed, we believe that an individual making his or her own decisions about voting defaults – that he or she may later confirm or override, is a lot more "informed" than an institutional shareholder outsourcing a voting decision to a third party proxy advisor to vote all shares at all companies in accordance with a policy set a handful of undisclosed individuals, following undisclosed procedures, in a non-transparent process.

The CDV model could generate services and other efforts to inform investors, in the same way that third party proxy advisory services seek to inform institutional investors. Requiring different standards for retail and institutional investors would further disenfranchise the retail investor community and create greater imbalance in the proxy voting systems.

II. Institution of the CDV model, or similar mechanisms to empower shareholders, should be complemented by enhanced communications technology, including shareholder forums, virtual meetings, investor network, and increased access to educational resources

In recent years, companies have increasingly leveraged web-based technology to

improve communications with shareholders and provide greater access to information through corporate websites. We support these tools and believe that they can and will facilitate greater communications between public companies and their retail shareholders.

We believe that the CDV model could be complemented by additional web-based tools to enhance the interaction between companies and their retail shareholders. Developers of these software solutions would drive innovation in a competitive marketplace to increase the effectiveness of these tools and improve the ease and efficiency by which retail shareholders analyze company information and vote their shares. These emerging tools include:

- **Shareholder forums**- A shareholder forum would serve as the central platform that supports the CDV model. Such a forum would be the hub of retail investor communication through which retail shareholders could set or change their standing instructions and access other communications or educational tools.
- **Virtual meetings** - Companies could make greater use of virtual shareholder meetings to complement their physical meeting. Annual meetings are broadcast via the internet and validated shareholders can participate in real-time.

Investor networks - Investor networks could offer a forum for virtual communication between shareholders and management, directors, and validated shareholders. This could serve as a venue for discussing views and information found in company filings or events that occur between filings.

- **Educational resources** – Retail shareholders could access educational resources through the shareholder forum to inform them about their role in the proxy voting system. User-friendly tutorials could guide shareholders through the voting process and instruct them on other available tools.

III. A Robust Investor Education Initiative is Needed to Integrate the CDV Model in the Market and Improve Retail Shareholder Participation

Increased tools and resources must be complemented by a robust outreach program to educate individual investors about their role in the proxy voting system and the multiple vehicles available to facilitate their participation. In addition to recognizing the general lack of retail investor familiarity with the proxy voting system, the PWG also recommended that any changes to the proxy voting system, including the recent amendment to Rule 452, must include, as a critical component, a large scale education effort to inform shareholders about the mechanics of the proxy voting process.

In 2006, the PWG recommended that the SEC, the listed company community, and other appropriate groups coordinate to develop a significant investor education effort to inform investors about the proxy voting process and the importance of voting. Four years later, the need to improve retail participation has never been stronger.

IV. Preserve the Fiduciary Duties of Directors

The Board of Directors is the governing body of a corporation. While there may be differences in philosophy or direction, directors and shareholders are joined by a unity of purpose—the long-term viability and profitability of a corporation. Directors have a fiduciary responsibility to the corporation and must act in good faith, with a reasonable degree of care, unfettered by material conflicts of interest. A director must allow the interests of the company to take precedence over their personal interests.

While the CCMC believes that it is appropriate and beneficial for shareholders, particularly long-term shareholders, to be actively engaged with corporations, we do have serious concerns when shareholders advance interests unrelated to or adverse to the wellbeing of a company in a manner that lacks transparency to the corporation and to fellow shareholders. Directors, who are implicitly or explicitly beholden to an individual, or to a special interest group, may have a conflict of interest with the fiduciary standards that directors must adhere to. A potential example of this is the CalPERS 3D Program.

CalPERS is an organization whose board is made up of various individuals, including elected and appointed public officials of the State of California. It is unclear what if any safeguards are in place under the 3D Program to insure that members in the pool of shadow directors adhere to their fiduciary responsibilities, if elected to the Board, and not act in the interest of a particular individual or a specific group. Accordingly, the CCMC believes that the 3D Program should be required to become transparent in its operations and publicly disclose among other things:

- The extent and purpose of the 3D Program and what shareholder interests it is advancing;
- The process that the program grants membership in its director pool, including the involvement of third parties in that process, the questions candidates are asked, and the responses candidates provided, as well as any assurances the candidate provided, or which were made to the candidate,
- The names and affiliations of shadow directors it has recruited and their qualifications;
- Any political contributions made by a shadow director to any CalPERS board member;
- Any award and amount of any contracts or investment business by CalPERS to a shadow director;
- Any award and amount of any contracts or investment business by a CalPERS board member to a shadow director; and
- Any personal relationship between any CalPERS board member and any shadow director.

Any other organization that would seek to use the 3D pool of shadow directors should have to issue similar disclosures as listed above. Additionally, we believe that appropriate supervision should be given by the SEC to insure transparency and

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disclosure whenever such a list of potential nominees is drawn up by a group or groups that may be engaged in an effort to use the newly promulgated proxy access rules or combine short slates.

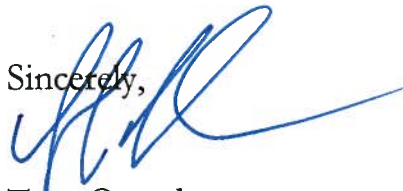
Conclusion

The CCMC supports a holistic review of the proxy voting system and we look forward to engaging the relevant groups in this important dialogue. However, it is necessary to increase retail investor participation and ensure that the proxy voting system is working efficiently for all participants in the 21st century marketplace. To this end, we urge the SEC to move quickly this year to provide the necessary guidance to facilitate implementation of the CDV model and support and encourage other initiatives that will improve retail shareholder voting. The recent promulgation of new proxy access rules serve the special interests of a few activist shareholders, and it is now critical that the SEC work with deliberate speed to ensure that retail interests are not marginalized by this and other changes.

Additionally, the CCMC believes that the SEC needs to take prompt action to supervise proxy advisory firms, protect the fiduciary duty of directors, and promote voter accuracy. All of these steps will help to restore balance in the proxy voting system and protect the interests of all investors.

The CCMC is committed to working with the Chamber's diverse membership to provide the SEC with broad-based input to facilitate this goal. Individual shareholders can and should be enfranchised with the tools and resources necessary to adequately represent their interest in growing the long-term value of the corporations in which they invest. We would be happy to discuss these issues further with you or the appropriate SEC staff.

Sincerely,



Tom Quaadman