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**HELPING PUBLIC COMPANIES – AND THEIR SUPPLIERS – TO DELIVER BETTER,
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Elizabeth M. Murphy, Secretary
Securities and Exchange Commission

October 12, 2010

- VIA E-MAIL -

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

Dear ladies and gentlemen of the SEC:

Congratulations on the very thorough, well-drafted and thought provoking Concept Release on the Proxy Voting System.

The document, and the many earlier comments and white papers that have been filed with you, many of which the Release cites, underscores the importance of having Proxy Voting Systems that operate smoothly, transparently, economically, and with absolute integrity. It also demonstrates how passionately most users of the system feel about the need for our proxy voting systems to operate in such fashion, how complex and hard to understand the current systems actually are, and how frustrated many users of the current systems are, when they perceive, as I do, that there are shortcomings, and parts that do not function as well as they should.

Having read the Release with care – and in the context of my 40+ years of hands-on experience as a manager of proxy distribution, tabulation, solicitation and proxy adjudication services – I would urge you first and foremost to take out and sharpen Ockham's razor as you review the many comment letters you are likely to get, and to bear in mind that the simplest explanations and the *simplest solutions* are likely to be the best and most productive ones to focus on. I will try to keep my own comments on the Release as short and as simple as I possibly can and confine them to the areas that I believe are most in need of fixing.

Over-Voting and Under-Voting:

It is clear from the discussion in the Release itself that “over-voting” takes place at virtually every shareholder meeting - because pre-reconciliations have not been done by each and every bank and broker custodian to assure that (a) there will be only one vote per share *issued* and (b) that all votes issued are issued only to the parties that are legally entitled to have the voting power.

Over-voting is, quite simply, untenable. Allowing it to continue makes a mockery of the idea of corporate democracy. There is ample evidence that people *do* try to “game” the system, since votes do indeed have value - especially when the voting outcomes have the potential to move the stock price, as often they demonstrably do. (See, for example, “*Vote Trading and Information Aggregation*” which is easily accessible on the Internet and which documents huge spikes in share purchases near meeting record dates and corresponding sales immediately thereafter). There is also a great deal of evidence that the “gamesters” quite often *succeed* in gaming the vote, since, (a) as the study pointed out, one can buy votes for about \$6 per million votes and (b) vote buyers will vote 100% of the time, while long-term owners tend not to vote at all, which allows the voters with “duplicate voting credentials” not just to go undetected, but to have their way in terms of the election outcomes. It is especially important to note in the context of election “gaming” that the interests of short-term and long-term owners are, almost always, *diametrically opposed* in election contests.

The solutions here are simple ones:

- **Securities custodians must establish firm rules as to when, exactly, a client is entitled to *have* voting rights – and the rules must be clearly *communicated* to their clients – and followed faithfully:** If clients lose some or all of their voting authority because they have a margin account or a margin balance, they need to know it. If a securities loan causes some or all of a share owner’s voting rights to pass to the borrower – clients need to know that too. If the custodian gets paid for “lending” a client’s voting rights to someone else, the client should know that. If the client gets only some of the proceeds, or none, from such vote-selling arrangements, they should know that too. If clients have the right to recall any securities that have been lent in order to recover the vote, they need to know exactly how and when to do it. ***I believe that the SEC can – and should – act immediately to totally eliminate over-voting: Acting in concert with bank regulatory authorities, the SEC should require every securities custodian to have a set of rules that will spell out who, exactly, is to be entitled to vote under the variety of circumstances the Release details. The rules – along with a statement as to the effect on each beneficial owner’s voting power, and what, if anything they need to do to retain full voting power – should be disclosed to clients in plain English at least once a year, but ideally, with every voting credential that is issued by banks and broker custodians.***
- **For the rules to work effectively, they must require securities custodians to perform a thorough *pre-reconciliation* before any proxies, Voting Instruction Forms or Legal Proxies are issued to potential voters, so that only the parties who are legally entitled to vote will receive voting instruments:** Post-distribution reconciliation efforts are simply not acceptable because they allow custodians to issue more voting rights than there *are* rights. But also worth noting, (a) the existence of “duplicate” voting rights is undetectable – unless and until the voting by a custodian’s clients goes over 100%, which rarely happens, because of low individual investor voting, (b) post-distribution reconciliation takes place totally behind the scenes, with no clear rules, no accountability and no transparency, (c) post-distribution reconciliation is, *by its nature*, entirely *arbitrary*, since clearly, if a true reconciliation could have been done, in line with a formal set of rules, it *would have been done* and (d) in my many experiences in dealing with over-votes - whether handled by a custodian or by the proxy tabulator – post-hoc reconciliations almost always award the vote to the wrong party: Many post-distribution reconcilers count the earliest votes cast and toss out the latest

votes, which usually *should count* – or split the vote on a pro-rata basis, which produces a totally arbitrary and a legally invalid result, should someone discover it – and some tabulators throw out *all* the votes when there is an over-vote, disenfranchising the legally entitled owner altogether.

More and more corporate voting issues are being decided by the thinnest of margins these days. Voters, issuers and other proxy proponents need to have assurances that every vote will be counted correctly and that both the pre-reconciliation procedures and the final tabulating and judging procedures will be “rules-based” and completely auditable if questions or challenges to the reported results are raised.

Vote Confirmation:

We believe that it is easy and inexpensive to provide a vote confirmation to any shareholder who asks to have one, mainly because few people *will* ask to have one. As noted above, however, some voters *may* want to have a confirmation as to how their vote was recorded with respect to closely contested matters, or when there are “close” voting outcomes, and if so, they should be able to have them.

But much more important to voters, we believe, is the assurance that the system as a whole is operating effectively – and accurately – and that it is readily *auditable* if voting is “close.”

There is a good and very simple solution here too, to greatly improve the transparency and auditability of proxy voting and tabulating systems:

- **The industry should do away entirely with the “Voting Instruction Form” that is currently being sent to street-name shareowners - and require each custodian to execute an “omnibus proxy” in favor of their beneficial owner clients - so that each beneficial owner will receive the company’s own form of proxy – where, unlike with VIFs, its validity, or lack thereof can be readily discoverable and will be subject to the proxy rules of the issuing company’s state of incorporation.**

This proposal was first made by the California Public Employees Retirement System, in a letter to the SEC dated November 3, 1989. It was endorsed in a September 1990 letter to the SEC that I signed as a senior officer at a major bank, and in subsequent comment letters I wrote as well, from the perspective of an Inspector of Election in closely contested elections. More recently it has been proposed and endorsed by the Shareholder Communication Coalition.

This is a very simple improvement to make. Aside from making the voting system much more transparent and far more auditable when there are close elections, I believe that consolidating the two processing and voting systems will also result in significant cost savings to issuers.

Proxy Distribution Fees:

Many people in the issuer community, and in the proxy mailing, distribution and tabulation businesses, have, since the early 1990s, been very loudly asserting that the fees that are currently authorized – with the explicit *consent*, I’d have to say, of the SEC – are simply “too high.”

The current monopoly that exists with respect to the task of aggregating the names and addresses of beneficial owners for the purpose of issuing voting materials (which is a “natural monopoly” in my view) dates from a competitive bidding process that the SEC launched in 1984, and where the winning bidder was determined in 1985; 25 years ago.

Since then, as many issuers and many other service providers have been pointing out with regularity, distribution and tabulation technologies have changed radically – and many service providers have been asserting that they, or other vendors they are aware of, can offer the same or better services for less money as a result. It’s time for them to put their money where their mouths are:

The time for a fresh look at proxy distribution, tabulation and processing methods – and the costs associated with such tasks – is clearly NOW...And the best solutions – along with the optimal cost structures too – are incredibly simple to come by:

- **The SEC should immediately launch a process to seek competitive bids for (1) the job of aggregating and making available to qualified entities the names of all beneficial owners who are entitled to vote in corporate elections and (2) for various other tasks such as the issuance and distribution of voting instruments and related materials and for vote tabulation services - just as the SEC did in 1984.**
- **The Requests for Proposals should specifically require a de-coupling of the “natural monopoly task” of aggregating names from all the other voting-related tasks. While clearly, the job of aggregating beneficial owner names can only be awarded to a single vendor, from practical and economic perspectives, a well-drafted RFP will allow qualified vendors to submit their own mix of service offerings, prices and price structures, so issuers can decide for themselves as to the providers of distribution, tabulation and related services that will serve their own needs best.**

Allowing the invisible hand of free-market competition the freedom to determine the “right price” for proxy distribution, tabulation and related communications services is not just the *simplest way* to deal with marketplace outcries for change; it is the *right thing* to do.

Communications with Shareowners:

I believe that the Concept Release, and this comment period, gives the SEC an *unprecedented opportunity*, and an excellent “jumping off place” from which to deal with *all* of the issues raised, but in particular, with the many complex issues surrounding the overall communications systems.

Here are the very simple steps I think the SEC can and should take, as soon as possible:

- **Use the rebidding process itself as an opportunity to thoroughly explore the idea, and the big dollar-savings that I believe will arise, from a unification of the “registered” and “beneficial-owner” processing streams.**

- **Use this same rebidding process to permit bidders to offer voters more *options* for having two-way communications with issuers, instead of continuing to rely on the totally outdated and outmoded “NOBO/OBO” designations. Today’s technology allows consumers to make all sorts of choices as to what they do and do not want to receive, and as to *how* they want to receive various kinds of information.**
- **We need to recognize that most share owners have absolutely no reason to want their names to be a “secret” to the companies whose shares they’ve decided to own...as long as they are not “over-bothered” by them.** And this is something that “permission-based communications systems” – which are widely available – will completely resolve. Note too, that many shareholders WANT more communications with the companies they own – especially if they may get “special offers”, coupons or “deals” – and especially, I think, when important business or governance developments are at issue.
- **The “opening up” of two way communications that I propose also presents a wonderful new opportunity to educate shareholders about the value of their vote - and about the voting process.** And if I am correct that a steadily growing number of investors will sign up for various kinds of emails, “alerts” and reminders from the companies they own, we will open up a major new way to educate investors about voting issues, and to get out their votes – via emailed messages, video clips, links to the voting site, etc. – as long as the shareowners consent.
- **We also have to realize that some shareowners DO want to keep their financial affairs private – to the extent they are legally entitled to do so – and that our communications systems MUST accommodate them.** I believe however, that as indicated above, the vast majority of share owners will consent to having their names revealed to issuers, as long as they have control over the kinds of communications they will generate by “consenting” – along with firm assurances that their names and addresses will be used only for purposes that they themselves authorize.
- **I do NOT believe, however, that shareholders who assert their rights to privacy should be forced to “pay extra” for the privilege, as some have suggested.**
- **Last but far from least in the context of communicating with shareowners, we must face up to the fact that the current system is clearly broken:** Over the past 10 years, voting by individual investors has gone down year after year.
- **The real answer here is a simple one too: we MUST *re-define* and *simplify* and *shorten* the amount of information a shareholder REALLY needs to have in order to make voting decisions. And we have to place this information “*up-front*” and in a way that “*closes the marketing loop*” by allowing the shareowner to act on the spot.**
- **I urge the SEC to allow issuers to include an “executive summary” of the issues on the ballot - for inclusion with the “NOTICE” – and to present and deliver it in a way that will allow the shareholder to vote then and there:** Yes, you may have to issue some “guidance” to issuers and some warnings about potential misstatements or “unbalanced presentations.” And yes, you probably do have to remind voters in bold print about where they can find more information if they feel they need it. But we need to remember that there’s a lot more to life these days than voting proxies; so unless you

make it *easier*, investors will continue to discard what has, increasingly, become true junk mail, largely thanks to that useless “Notice.”

Respectfully submitted,

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