MOXY VOTE

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Elizabeth M. Murphy, Secretary

Securities & Exchange Commission

100 F Street, NE
Washington, DC 20549

Re: File No. S7-22-09

Dear Ms. Murphy:

On behalf of Moxy Vote I submit these comments on proposed rule in the Release entitled *Amendments to Rules Requiring Internet Availability of Proxy Materials.*

Moxy Vote is new web-based application designed to facilitate proxy voting by individual investors. It provides individuals the ability to receive ballots and submit votes electronically. Moreover, it endeavors to build robust content that is intended to inform voters.

Moxy Vote appreciates very much the Commission's interest in streamlining and improving the mechanisms by which shareholders can vote proxies using the Internet. We believe that the proposal contains some useful reforms to the current system by which shareholders, especially retail shareholders, receive notice about the availability of proxy materials and an opportunity to vote those shares. We would recommend, however, that the Commission expand its inquiry to a more wide-scale examination of how the proxy voting mechanism works in the Internet age and what steps the Commission can take to facilitate proxy voting by individual shareholders.

In the section that follows, we will outline Moxy Vote's assessment of the current problem and suggest some areas that we believe the Commission should examine as it moves forward.

Overview

Presently it is estimated that approximately 25-35% of shares of public companies are held by individual ("retail") shareholders with an even higher percentage for mutual fund shares. This segment of the shareholder base is notoriously apathetic toward completing and submitting proxy ballots or providing vote instruction forms ("VIFs") - the latter in the case of shares held at banks and brokers. The primary reasons for voter apathy include the following:

- inefficient voting methods (i.e., typically by paper or phone)
- a general lack of a sense of empowerment (i.e., a feeling of "what good will it do?")
- a general lack of information to permit an informed voting decision
- a general lack of knowledge regarding the process and the right to vote

The result of this voter apathy among retail shareholders is a system of corporate governance that could be greatly improved. At best, the current system is dominated by institutional investors and, at worst, the board and senior executives of some public companies are left with little accountability for their actions. The present escalation of compensation among senior executives amidst poor company performance is one of several negative ramifications of the current environment. Without improvements, the current system threatens the viability of the U.S. public equity market and the U.S economy.

Electronic Voting Platforms – The Solution for Retail Voter Apathy

Currently, many institutional shareholders (e.g., mutual funds, pension funds, Registered Investment Advisors) vote their clients proxies electronically through one of several on-line electronic voting platforms (e.g., Broadridge, RiskMetrics, ProxyGovernance, Glass Lewis). The process is very efficient. The ballots are delivered electronically to a web-based application and the votes may be submitted from within the same application. Moreover, voters may create "default" proxy voting policies, or standing instructions, such that they do not need to return to the site to vote each ballot individually. This method ensures that all votes are cast even without a direct action by the shareholder. The votes, or default voting policies, on the institutional sites are supported by research that is used to inform the voter and improve the quality of the vote. The research is often provided by the application provider (e.g., RiskMetrics) or the platform provider may develop connections to third-party research (e.g., as is the case with Broadridge's ProxyEdge platform).

The development of electronic voting platforms for retail investors is the solution to all of the issues presented above. Specifically, electronic platforms can provide information to allow investors to make informed voting decisions at the time that they are voting. Moreover, group participation with other like-minded retail voters through these electronic platforms will strengthen the "voice" of the retail voter thereby empowering the voter. Also, electronic voting platforms that are seeking a profit will allocate resources to educating the investing public regarding the overall process and its importance in an effort to attract users. Finally, electronic voting platforms are significantly more efficient than the currently available voting methods and would therefore greatly increase participation.

Why have retail platforms failed to develop?

In solving the retail voting issue, the primary objective of the Commission should be to work to facilitate the development of web-based retail voting platforms. The electronic voting platform that exists for institutional investors today is similar to the model for the platform that should exist for retail investors. There are several reasons, however, for why the retail platform has failed to develop. These reasons are listed below and are covered in greater detail in the sections that follow.

1. Cost to the retail investor
2. An unsettled regulatory environment that discourages business investment
3. Structural issues present in the industry – the lack of a single source for proxy ballot dissemination and vote tabulation

Reason #1 - Cost:

Presently, institutional investors that are voting shares that are held at banks and brokers must pay electronic proxy voting platform providers to vote the proxy ballots for the securities that they hold. This is an inherent flaw in the system that has largely gone un-noticed because the fees are presently not prohibitive to most large institutional investors. For example, the fees are typically charged on a per-ballot basis such that an owner of 1,000,000 shares would pay the same to submit a vote as an owner with 10 shares. This fee structure is a barrier to participation by shareholders with smaller positions.

There is a similar issue present in regard to the research and analysis required to make an informed vote. A research provider typically does the same work and desires to charge the same fee regardless of the shares held by the research purchaser (i.e., the shareholder).

How can the Commission help?

It is our contention that fees for electronic vote submissions should be paid by Issuers. In our eyes, this fee is analogous to postage on a business reply envelope or long-distance charges for ballots that are voted by telephone. Presently, proxy distributors are able to seek reimbursement for both of these costs and a nominal amount for votes submitted electronically. However, based upon industry practice, the reimbursement does not extend to electronic voting platforms that bear costs for submitting electronic votes to the proxy distributor. Consequently, the electronic voting platforms typically pass vote submission costs on to voters. We would contend that electronic voting platforms are merely an extension of the proxy distributor in this instance and any basic costs related to the core processing of votes should be reimbursed by Issuers. Of course, any charges for added functionality or proprietary research that is built in to an application should be subsidized by the electronic platform provider who may, in turn, sell these services as "value-added" items. The Commission should work with the NYSE to clarify the listing standards to ensure that these fees are subject to reimbursement.

Reason #2 - Unsettled Regulatory Environment:

The current regulatory environment is deemed to be favorable to retail investors, however, it is in a rapid state of change and we have found that there are differing opinions among the legal community as to how certain rules should be interpreted. The net effect of all this uncertainty is that it discourages investment. Business speculators will generally not be as concerned with normal "start-up" business risks as they will be with regulatory and structural risks as these are viewed as more unpredictable and inherently less manageable.

How can the Commission help?

While there is not an easy solution to this problem, the Commission should continue to take steps to demonstrate that it is supportive of the development of electronic voting platforms for retail investors. Specially, the following steps are suggested:

- Clarify the proxy solicitation rules to ensure that participation by third-party content providers on electronic platforms, including those providing a vote recommendation does not constitute a "non-exempt" solicitation. More specifically, these groups should not be subject to filing and notification requirements that would deter participation as they are needed to provide content on these platforms. Of course, traditional prohibitions against materially false or misleading statements should remain in effect.

- Look for opportunities to facilitate participation by Issuers on these platforms to ensure that Issuers will be supportive of their development. For example, consideration may be given to amend the 60-day "blackout" period for participation in third-party on-line forums.

Reason #3 - Structural Issues in the Industry:

Structural issues are the largest challenge standing in the way of better corporate governance in the United States. Changes to the structure of the industry could result in the rapid development of electronic proxy voting platforms and greater participation by all investors and, most notably, retail investors. Below we discuss structural issues as they pertain to two distinct groups of shareholders (i.e., registered shareholders and beneficial shareholders).

We propose that the solution to these issues is a central source for proxy ballot distribution and tabulation. Although this task would take some time to complete, and there would be transitional issues to address, we believe that a central source would expedite the development of electronic voting platforms.

Issues for Registered Shareholders – In regard to "directly held" shares (i.e., shares that are not held through banks and brokers), the industry is very fragmented. Presently, Issuers (whether issuing stock or mutual fund shares) hire a transfer agent to, among other things, maintain a list of registered shareholders. These transfer agents facilitate the mailing of proxy materials and the tabulation of votes for all "directly held" shares. Most of these transfer agents therefore have their own proprietary methods for distributing ballots and gathering votes. Typically, these transfer agents do not connect to the existing electronic proxy voting platforms. An electronic proxy voting platform that desires to service shareholders that hold "directly held" shares would, in effect, need to build an interface with every single transfer agent (assuming a willingness of the transfer agent to participate). This solution is impractical and costly. If all transfer agents were required to send ballots through a central source, then the central source could provide a single connection point for any and all electronic voting platforms seeking to receive ballots electronically. This problem is particularly discouraging in regard to 401(K) plans maintained by public companies. Often 401(K) plans are in the custody of a broker, however, the shares held within the plan are still considered to be "directly held" and are not eligible to be voted through electronic platforms. Given that past and present employees are typically one of the largest groups of retail shareholders for a given Issuer, the Commission should be concerned with this problem.

Issues for Beneficial Shareholders – In regard to "beneficially held" shares (i.e., shares held by banks and brokers on behalf of their clients), there are competing interests among existing industry participants that could derail the development of electronic voting platforms for retail shareholders. One example is that some distributors of VIFs are delivering these forms directly back to the shareholder's account at the bank or brokerage where the shares are held. This is a solution that is attractive to issuers and brokers but not necessarily to retail investors. While, at first this appears to be a beneficial solution for the retail investor, it will likely limit the content that a voter will have at his or her disposal when casting a vote. Moreover, it will limit the development of automated proxy voting policies that have emerged on the institutional side that result in far greater participation. Although these types of issues exist, a central mechanism for distribution, combined with the retail voter's ability to choose his or her voting platform, would address most of these issues.

How can the Commission help?

Given that the development of a central source for ballot dissemination and vote tabulation is a significant task, we encourage the Commission to rather focus on changing the rules such that a central mechanism will prove to be a desirable solution for industry participants. Specifically, the Commission should pass a rule that states that a shareholder has full control to request that a proxy ballot or VIF be delivered electronically to the voting platform of his or her choice (e.g., as one may select a physical address or an e-mail address). Such a rule would compel participants to "plug in" to electronic voting platforms that are being developed. Consequently, distributors and tabulators would quickly realize that a central dissemination and collection point may provide a nice solution to the inefficiency of attempting to build an interface with each platform separately. Or, in lieu of a central source, such a rule would encourage the development of standardized file formats and procedures for electronic voting that would expedite progress.

Conclusion

We appreciate this opportunity to comment and look forward to the Commission's continued efforts on this issue. Please do not hesitate to contact me if there is anything further that we can provide.

Very truly yours,

Larry S. Eiben
Principal