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March 27, 2009

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549
Via e-mail: rule-comments@sec.gov

Re: Proposed Amendment to New York Stock Exchange Rule 452, File Number SR-NYSE-2006-92

Dear Ms. Murphy:

I am submitting comments in response to the Securities and Exchange Commission ("Commission") rules change notice based upon the recommendation of the New York Stock Exchange's ("NYSE") Proxy Working Group ("PWG"). The foregoing is aimed at addressing specific problems that would arise from the approval and implementation of an amended Rule 452, and at outlining a solution that would help redress the imbalance created should the Commission enact the PWG's recommendation regarding this rule.

To assist the Commission, I am attaching my two earlier comment letters, the first, of July 14, 2006, to the NYSE; and the second, of May 23, 2007, to the Commission discussing these issues in greater detail.

Before I begin my comments, I would like to make two important points.

First, I am compelled to urge the Commission to extend the comment period on this issue to a total of at least 90 days. It is not clear why, given the decades long existence of Rule 452 and the years of study by the PWG (since 2005), the Commission needs to push this dramatic action forward while limiting the comment period to a mere 21 days.

This is no minor rule change that is being proposed. This amendment, as envisioned, may well lead to the disenfranchisement of a large portion of the retail investor community, and have a harsh and negative impact on many small- and mid-cap companies, as well as large-cap firms with significant numbers of retail owners. It will also provide an unfair advantage to some institutional investors (e.g. hedge funds), and increase the influence of

proxy advisory firms with regard to companies where their influence is now limited. Although "change" is the watchword of the day, the issues brought forward by this proposal are complex, and the actions contemplated by the Commission will have a long-lasting and far-reaching effect on our capital markets, and on the rights and responsibilities of shareholders, both retail and institutional.

Our request to extend the comment period is made in consideration of the fact that a total of only 46 comment letters were submitted to the NYSE in response to the PWG draft. The size of the response points to a failure on the part of the NYSE to ensure wider issuer and investor comment. Considering the breadth and importance of the changes sought in this amendment, an extended comment period would potentially allow for greater participation from retail/small investors and almost certainly result in a greater response from corporations. The length of this comment period (21 days) is inadequate and may to some degree limit responses to the handful of firms, groups and organizations most intimately familiar with and active on these issues, while effectively excluding many companies and the vast majority of retail shareholders who lacked the time to carefully consider the issue and prepare a response.

Second, as a firm in the business of proxy solicitation with a client base that includes hundreds of small-cap companies, I must be honest with the Commission and disclose that your action in approving this amendment (with which I strongly disagree), or my suggestion for the creation of an All Beneficial Owners ("ABO") status as a means of providing balance for issuers, will both greatly benefit The Altman Group directly as it will all other proxy solicitation firms. A Commission approval will expand the universe of companies requiring proxy solicitation services and lead to greater fees paid for proxy solicitation by companies and dissidents wishing to communicate with NOBO and OBO[1] holders, or to reach desired levels of shareholder participation in their effort to elect director nominees.

Summary

As stated in my two previous comment letters, I appreciate the time and effort of the members of the PWG as they worked to develop a set of recommendations aimed at streamlining the proxy management process, promoting greater transparency and strengthening corporate democracy.

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[1] The Securities and Exchange Commission's rules allow for the disclosure of the name, address, and number of shares registered in the name of a broker or bank for any beneficial owner who does not object to such disclosure. Beneficial owners of this type are known as Non-Objecting Beneficial Owners ("NOBOs"). Those beneficial owners who choose not to have direct communication with the public company they are invested in are known as Objecting Beneficial Owners ("OBOs").

However, I continue to believe the PWG's recommendation to eliminate the broker discretionary vote in director elections will place an unreasonable financial burden on companies with a significant percentage of outstanding shares held by retail owners, or other companies with large numbers of retail owners, and will disenfranchise many of those same retail shareholders, thereby potentially concentrating voting power in the hands of institutional investors and proxy advisory services.

The acknowledged reality is that many institutional investors, lacking the resources and expertise to properly evaluate proxy votes, are dependent upon and strictly follow voting recommendations from the proxy advisory services.[2] This dependence creates a situation where the proxy advisory firms wield a powerful influence on the direction of shareholder votes equal to or greater than the broker discretionary vote as presently allowed under Rule 452. Combined with the elimination of the broker vote, this increase in the influence of the proxy advisory services may thereby lead to a concentration of voting power as well as a weakening of corporate democracy in the U.S. capital markets.

Discussion

In my letter dated July 14, 2006, I detailed an interim solution designed to address a number of concerns held by members of the issuer and investor communities. I recommended the Commission undertake the elimination of the NOBO and OBO distinction and suggested the creation of a category of ABOs (All Beneficial Owners) *solely with regard to record dates for votes at companies' annual or special meetings or in other cases requiring shareholder action*. Governance observers and parties interested in the mechanics of proxy voting are aware of the prospects for additional reforms to the proxy voting process. Both issuers and investors have identified the issue of outmoded beneficial ownership rules and the need for greater transparency therein as a major concern. It is clear that action in this area by the Commission is necessary.

I have identified three significant weaknesses that will primarily afflict operating companies, whose investor base is composed of retail shareholders owning a significant percentage of the outstanding shares, if the broker discretionary vote in director elections is eliminated:

- Difficulty in achieving quorum;
- Imbalance in voting power; and
- Voting rights question is not addressed

[2] "Voting Integrity: Practices for Investors and the Global Proxy Advisory Industry," a study on Institutional Investors, Proxy Advisory firms and the proxy voting process conducted by the Millstein Center for Corporate Governance and Performance, which is part of the Yale School of Management. The study is available at http://millstein.som.yale.edu.

First, companies lacking significant institutional ownership will find it increasingly difficult to gain a separate quorum for the election of directors. These companies, many with retail holders in "street name" owning a majority of shares outstanding, will need to retain (at additional cost) proxy solicitation firms to conduct outreach campaigns to NOBO holders. The bottom-line for retail-held issuers is that they will be required to bear a higher cost in an often frustrating attempt to solicit their owners to gain an appropriate level of votes for director elections. In many cases, these are companies with fewer financial resources to bear the burden of a large scale retail proxy solicitation.

Second, elimination of the broker discretionary vote will magnify the power and influence of large institutional investors[3], some of whom are short-term owners seeking to financially engineer a company's stock for a quick profit at the expense of long-term investors (small and large). This prospect, given companies' poor historic experience with instructional voting by retail holders and a well-documented decline in direct involvement by retail investors as a result of the Notice and Access model of material distribution, dramatically highlights the impact that the decline in retail owner participation may have in the voting process. A change to Rule 452 will result in further disenfranchisement of retail investors and greater concentration of voting power in the hands of the institutional investor community.

This is an especially important point, as companies during their life-cycle inevitably have significant *non-routine* issues to present to shareholders in their proxy. Examples range from Say on Pay resolutions and the growing trend toward adoption of the majority vote standard to ratification of Employee Stock Option Plans. Such situations demonstrate the utility of the ABO concept, which will allow companies to reach out and communicate with *all* record date holders. The Commission's approval of the proposed change to Rule 452 will create the possibility that issuers may not elect their director nominees as a result of block voting by institutions and the inability of companies to adequately communicate with all retail shareowners. In contrast, adoption of an ABO methodology will allow votes on significant issues to better reflect the wishes of those shareholders who are now not known to a company, but whose votes could be actively solicited in the future.

Finally, the proposed Rule 452 revision fails to address the lack of transparency inherent in the current proxy voting process. The public pension funds, the Taft-Hartley funds, and commentators who have been the loudest and staunchest advocates for eliminating use of the broker vote in the director election process have failed to address the other half of the equation – the need for greater transparency as to who actually holds voting rights.

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[3] This term is used and intended to encompass a wide variety of investors – from hedge funds to public employee pension funds.

While it may be true that companies will no longer be able to, as one activist characterized it, 'stuff the ballot box' with the broker vote, it is equally true that neither advocates nor issuers truly know who actually owns all of the rights to vote a companies' shares.

There are some serious problems left unaddressed by this proposed rule change that an ABO system will help remedy:

Empty Voting. [4] The decoupling of voting rights from economic interest in a company's shares is a serious concern for issuers. This problem is most closely identified with the share lending activities conducted by large institutional investors. For example, an investor (perhaps a hedge fund) borrows stock from an institution (public pension fund or foundation) prior to the company's record date. The hedge fund returns these shares to the institution immediately after the record date. As the holder of record, the hedge fund has purposefully positioned itself to vote the shares and influence the election of directors through support of dissident candidates (perhaps their own nominees), or shareholder resolutions without the economic risks attendant to share ownership.

- ABO Solution: The Commission's adoption of the ABO concept would address some concerns around share loan programs by enabling a company to identify at least some of the institutions with shares out on loan and also identify hedge funds and other investors whose share positions have shown significant increases as of the record date.[5]

Opaque Ownership. The use of financial derivatives by hedge funds and other institutional investors to shield their ownership (and/or non-disclosed voting rights) from an issuer poses significant challenges to a company seeking to determine who is entitled to vote shares at a meeting of shareholders. These artificial ownership or voting positions are not covered by Commission disclosure rules requiring transparency of ownership positions exceeding 5%.

- **ABO Solution:** The privacy argument has been used in the past by institutions that do not wish to have their ownership or derivative positions disclosed, fearing it might reveal their trading strategy. The ABO concept could be structured to deal with this issue. All beneficial owners who have disposed of voting rights in excess of a pre-determined percentage would be required to identify all situations where they have voting rights for fewer shares than are disclosed as shares owned by such entity. Under our ABO proposal such information would not be made public but

[4] The term is meant to describe a situation where voting power has been "emptied" of a corresponding economic interest.
[5] An additional benefit, if acted on by the Commission would be to add a new element to the U.S. disclosure regime requiring all investors to disclose stock borrowing and derivative transactions that have an impact on voting rights as of record dates for meetings. ABO disclosure would be an important mechanism for advancing the voting system in our markets to a point where the identity of all parties entitled to cast votes at the meeting is brought into clear view.

would be available solely to the issuer and only for that one record date per year (presuming the company does not also have a special meeting for some other purpose at another time) pertaining to the annual meeting.

Over-Voting. Over-voting usually results from share lending and short sales and describes a problem confronting issuers when a broker is faced with the prospect of its clients casting more votes than the firm is entitled to cast. As most brokerage firms prefer to not pre-reconcile voting rights with regard to all annual meetings, there is a question as to whether accurate voting lists are always used.

- ✓ **ABO Solution:** A complete list of owners, segregated by firm and share amount, will enable companies to easily identify over-vote situations, e.g. situations where brokers or banks identify more shares than The Depository Trust Company's records indicate are eligible to vote. The issue of transparency and over-voting by brokers would be addressed via this change. While the financial community will complain of the challenges associated with pre-reconciling voting rights, those very objections likely confirm the seriousness of the problem of actually establishing who is eligible to vote.

Proxy Contests – Cost and Outcome Concerns. While the bulk of my discussion has been focused on problems and costs that an amended Rule 452 would impose on companies in a non-contested annual meeting context, there are financial and other burdens placed in the path of both corporations and dissident shareholders in their efforts to communicate directly with OBOs or with limited numbers of street name holders (both NOBOs and OBOs) during a proxy contest. Given that many/most proxy fights are decided by a margin of less than 5% of outstanding shares, it can be assumed that active solicitation of all beneficial owners might result in a change in the outcome of some contested elections.

- ✓ **ABO Solution:** If an ABO system were in place for proxy contests, it would permit direct communications with all securities holders for company and dissident alike. This would allow the will of all shareholders to be the deciding factor in a contest rather than the current system that has proxy advisory firms and NOBOs accounting for a disproportionate percent of shares voted. Further, by making available the complete list of beneficial owner names, corporations and dissidents can then selectively mail their supplemental communications as they see fit and not be forced to pay mailing and other fees that are currently assessed by Broadridge in a non-competitive environment.

In the proxy voting process, transparency should be paramount and, like risk mitigation, should be among the primary focuses of the Commission, the stock exchanges, and the issuer and investor communities. I would strongly encourage the Commission, if it intends

to approve amending Rule 452 as proposed, to concurrently set in motion the required legislative action necessary to establish an ABO process as a means of providing balance for all issuers, particularly companies with large numbers of retail share owners.

I believe the establishment of ABO status is a fair action for the Commission to undertake. It is a level of authority that bankruptcy judges already possess and have selectively been willing to exercise to ensure that companies in bankruptcy have the opportunity to communicate with all securities holders.[6] Operating companies should not have fewer rights – especially when it comes to the right to identify and communicate with all their securities holders – than a company operating under the protection of the U.S. Bankruptcy Courts.

Fairness Demands an Exemption for Operating Companies with Circumstances Identical to Investment Companies

I appreciate and endorse the actions of the PWG in exempting investment companies from the proposed change to Rule 452. I question the logic used by the PWG and NYSE in failing to adopt an exemption for similarly situated corporations. I do not understand why issuers that have circumstances mirroring those of investment companies, i.e., a high percentage of retail ownership and burdensome cost concerns, do not receive identical treatment to investment companies. Perhaps the Commission, in approving this amendment, can provide a safe harbor for such corporations.

A Final Suggestion for Improvement to Reform the Proxy Process

Any serious discussion of proxy voting and the management of the proxy solicitation process requires individuals with solid experience and intimate knowledge of the intricacies of the proxy process. The PWG failed to have any members who had direct involvement, at the practitioner level, in the proxy solicitation industry. To my thinking, this demonstrates that there may have been a true lack of understanding of the complexities associated with the proxy management process, especially for companies held primarily by retail owners. The PWG and the Communications and Proxy Process Subcommittee should put in place an effort that ensures balanced participation from experienced proxy solicitation and transfer agent professionals, in addition to corporate representatives, as a part of any ongoing activities.

[6] In 1991, Bankruptcy Judge Harold Abramson, U.S. Bankruptcy Court for the Northern District, Texas, Dallas Division in Case No. 390-37119-HCA-11 ordered a disgorgement of the names of all securities holders to enable direct solicitation of all security holders (both NOBO and OBO) in the Southland Bankruptcy case.

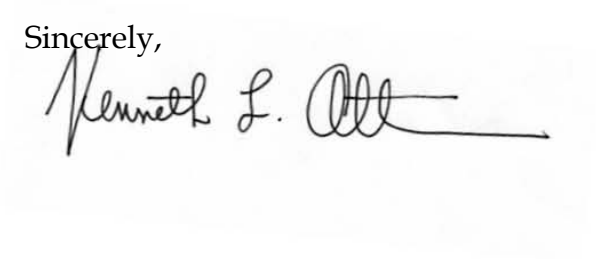
Conclusion

In closing, I will quote my May 23, 2007 comment letter to the SEC: "[w]hat is needed is a system that creates a true register of owners able to vote at a meeting rather than perpetuate a system that no longer reflects the standard that other global markets are moving to in terms of establishing the identity of owners eligible to vote at a meeting."

I also make a final plea to the Commission to extend the comment period on this issue to no less than a total of 90 days. Discussions of investor education in the PWG report and recommendation ring hollow when it is clear that substantial efforts to educate retail owners on the pending changes have not been carried out. It is as if a class of voters totaling tens of millions of people were suddenly empowered to vote but were not informed of their rights or how to exercise them. This is patently unfair and not in the best tradition of our democracy.

Please feel free to contact me if I may be of further assistance on these issues.

Sincerely,



Kenneth L. Altman
President
The Altman Group, Inc.

cc: Mary Shapiro – Chairman – U.S. Securities and Exchange Commission
Kathleen Casey – Commissioner, U.S. Securities and Exchange Commission
Elisse Walter – Commissioner, U.S. Securities and Exchange Commission
Luis Aguilar – Commissioner, U.S. Securities and Exchange Commission
Troy Paredes – Commissioner, U.S. Securities and Exchange Commission
Erik Sirri – Director, Division of Trading & Markets

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July 14, 2006

Catherine Kinney
President and Co-Chief Operating Officer
NYSE Group, Inc.
11 Wall Street
New York, New York 10005

Submission of Comments by The Altman Group with Respect to the June 5, 2006 "Report and Recommendations of the Proxy Working Group to the New York Stock Exchange"

Dear Ms. Kinney:

Purpose of This Response - I am submitting comments in response to the report released by the Proxy Working Group (PWG) established by the New York Stock Exchange (NYSE) regarding recommended changes to Rules 452. The purpose of my response is to describe certain problems I believe are created by those recommendations and to provide a proposed solution.

Request to Meet with Proxy Working Group - In addition to my response below, I am also requesting an opportunity to meet with the PWG when it meets during the week of July 17th, 2006, to further discuss my concerns and recommendations with respect to the proposed rule changes and the potential impact on various parties.

My Concerns - I am certain that PWG addressed the issues before it with diligence and made great efforts to gather information from a diverse group of parties. I also have no doubt the PWG's proposed changes are a legitimate effort to improve corporate governance and the proxy process. Nonetheless, from my perspective as an industry professional who has worked on literally thousands of proxy solicitations, I believe the PWG has proposed a rule change that may have the intent of opening up the corporate election process, but in many cases will actually have the opposite effect by concentrating power in the hands of a very limited number of owners, i.e., hedge funds and other highly sophisticated investors, and ultimately make the voting process less inclusive and most likely less democratic as well.

Credentials

I have worked in the proxy industry for over 35 years, starting with D.F. King & Co. in 1970, to when I established the proxy business for Hill and Knowlton in 1976 that I ran for 18 years, to my founding of The Altman Group in 1995, to my company's recent growth and winning of the last two TOPS Awards as the Highest Rated Proxy Solicitation Firm in the U.S.[1]

[1] The TOPS Award is based on an independent biennual survey conducted by Stockholder Consulting, Inc.

I and my company fully understand both sides of this issue and the consequences of eliminating the discretionary vote, having worked on both sides of the fence. We handle both "defense" assignments, i.e., helping companies combat withhold campaigns and hedge fund proxy battles, as well as "offense" assignments, i.e., representing dissidents, hedge funds and other activists (e.g., Investors for Director Accountability Foundation (IDAF) in its campaign against Pfizer, and CalPERS in its support of the compensation-related proposal at Home Depot).

A. Summary

In my opinion as a proxy solicitation professional with over 35 years of proxy solicitation experience, it would be a mistake for the NYSE to move forward with its proposed elimination of the routine vote provision of Rule 452 related to directors -- unless the rule change is coupled with the complete elimination of Objecting Beneficial Owner (OBO) status.

Failure to promulgate the PWG's proposed change to Rule 452 with a concurrent rule change by the SEC requiring full beneficial owner disclosure and elimination of OBO status will be extremely unfair to a large group of companies -- namely a significant number of NASDAQ listed companies and other companies whose shares are held primarily by retail holders rather than by institutions. These are companies with markedly different shareholder profiles from the group of companies involved in the ADP survey requested by the PWG.

I therefore recommend that the PWG suspend consideration of this issue until additional information is gathered. I also recommend that a new round of testimony be taken from a more representative sample of advisors and corporations that may likely have different views from those previously presented to the PWG.

B. Concerns

The proposed rule change to eliminate broker voting in connection with uncontested elections of directors, if it is not coupled with complete elimination of OBO status, will have the following effects:

1. **Disproportionate impact on achieving a quorum** - Adopting the PWG's proposed rule change (without simultaneous elimination of OBO status) will have a significant impact on the ability of many companies to achieve either:

    a. a vote of 50% of their outstanding shares voting with respect to the election of directors; or

    b. a majority of their shares voting in favor of their board nominees at those companies that have adopted the majority vote standard.

    As a result, implementing the proposed rule change in its current form will likely discourage many companies from implementing the majority vote standard. In particular, this will disproportionately affect some perhaps small number of NYSE companies and countless NASDAQ and AMEX companies with primarily retail shareholders as opposed to institutionally held companies that dominate the NYSE.

The Opinion Research Company (ORC) study results cited in the PWG's Report indicate that a large percentage of street name holders do not understand that their shares are now voted by their brokers on routine items. Based upon the ORC study results as well as my own experience and observation, such street name holders are unlikely to be susceptible to any educational campaign implemented by the NYSE, and it would be naïve to expect that any such educational campaign would increase voting by street name holders in any meaningful way, absent a massive and sustained campaign over an extended period of time.

2. **Concentration of power in hedge funds** - The elimination of the "routine" vote will create an environment where the power of sophisticated investors, e.g., hedge funds, will increase significantly at the expense of smaller shareholders whose votes will not be substantially represented.

   Under the current system, at least votes by smaller holders are actually cast, albeit not directly by them. Would the NYSE propose this rule change if it knew that many NYSE listed companies would have trouble getting 50% of all instructed votes voting for their directors or for a majority vote? Or to bring the point even closer to home, what if the NYSE, now a public company itself, were not able to achieve a majority vote because it was primarily held by retail OBO accounts rather than 13-F filing institutions?

3. **Overvoting problem will be hidden** – The problem of overvoting will still exist, primarily due to stock lending activity, but it will be increasingly obscured and difficult to track. Why? Because without brokers voting for non-responding shareholders, tabulation agents will see fewer overvotes and therefore have fewer instances of overvotes to draw attention to.

   The NYSE is no doubt keenly aware of problems relating to overvotes given recent disciplinary action taken against well-known member firms. By eliminating the discretionary vote in the manner proposed, the NYSE could unwittingly be sweeping the overvote problem under the rug. It will be more difficult to track how often overvotes are occurring on a going forward basis because fewer "true" overvotes will be reported by transfer agents.

   This hardly seems like an exercise in good corporate governance. The solution is to mandate controls and procedures that effectively eliminate the root cause of overvoting, i.e., the incorrect reporting of proxy positions by brokers. Full OBO disclosure would make this type of solution much easier to implement.

4. **Increase in proxy solicitation costs** – The cost for a company to achieve a majority vote for directors may increase due to the need for follow up mailings and telephone solicitations. While this increased cost may not be significant for large companies, it could be relatively quite expensive to many of the issuers most affected by the rule change, i.e., the smaller retail-held companies.

C. Beneficiaries of the Proposed Rule Change

1. **Hedge funds, activists and other highly sophisticated investors** – With fewer total votes being cast, activist shareholders will in essence control a larger percentage of votes actually cast. This will lead

to an increased concentration of voting power in the hands of such activist investors, and will enable them to exercise that power by forcing board changes without even instituting a proxy fight.

2. **Proxy solicitors** –The Altman Group and other proxy solicitors will enjoy greater demand for proxy solicitation services by companies who otherwise have rarely, if ever, seen the need to hire a proxy solicitor.

3. **ADP and NYSE member firms** – The need for public companies to generate more vote responses will mean increased mailings of proxy material to shareholders, thereby leading to greater profits for ADP and NYSE member firms -- the parties responsible for completing those additional mailings.

D. Harmed by the Proposed Rule Change

1. **NASDAQ listed companies** – Companies with primarily retail-based shareholders will have the most difficulty achieving a quorum and will likely be easier targets for hedge funds and activists pursuing withhold campaigns. NASDAQ listed issuers will comprise a disproportionate number of such companies.

   Given the likelihood the proposed rule changes will have such a significant impact on NASDAQ companies, it is worth asking why the NYSE never requested that ADP prepare reports with information about NASDAQ companies similar to the one requested for NYSE companies. The report prepared by ADP showed that the proposed change to Rule 452 would have a minor impact on most NYSE listed companies. It would seem to have been logical to request at least several reports on NASDAQ listed companies.[2]

   Such reports could have included data on the likelihood of achieving a quorum for all:

   1) NASDAQ companies in total;
   2) NASDAQ companies held principally by institutions; and
   3) NASDAQ companies principally held by retail owners.

   For companies with different shareholder profiles than those covered in the ADP research (i.e., retail based shareholders), the result of the rule changes will be dramatically different -- in many cases they will not achieve quorum for the vote on directors. For example, a corporation that has more than 25% of its shares held by retail owners will see a substantial decline in the vote for directors at its annual meeting. Additionally, NASDAQ listed and other companies with 50% or more of their shares held in street name through brokerage firms will find it very difficult to achieve a majority of votes for the election of directors.

   Certainly most if not all U.S. corporations have an expectation that their board will receive a favorable vote of more than 50% of all shares. Forcing a change with such a great impact on NASDAQ, AMEX and other non-NYSE companies that will only affect a *de minimis* segment of NYSE listed companies

[2] The same research could also be compiled for AMEX listed companies.

is likely to be perceived as an inappropriate exercise of the NYSE's authority to implement rule changes.

The NYSE's failure to anticipate the impact of these proposed rule changes or explain why information from ADP was never requested – information which would enable more accurate, fact-based conclusions to be drawn on this issue – is very surprising, particularly in light of the building pressure in some quarters of the U.S. business community for majority voting in director elections.

Given the disproportionate impact on non-NYSE firms, I ask the PWG to consider whether or not it should revise its recommendation to provide that its member firms do not apply the rule change to those companies listed on NASDAQ, AMEX and other exchanges.

2. **Perception of corporate governance as improving** – Assuming that one of goals of the PWG's recommendations is to improve corporate governance, a proposed rule change that does not mandate disclosure of OBO names and permit direct contact with shareholders by companies seems to be heading in the opposite direction with respect to good corporate governance. The entire voting process will simply become less transparent and less fair overall, given the effect on quorums, majority voting and overvoting.

   The ORC research has revealed that many holders do not vote, and in my opinion, the ORC research substantially overstates the number of street name holders that return proxies from an initial mailing of materials. Given this knowledge, there will simply be no practical voting solution for companies with primarily retail based shareholders. Consequently, the disparate impact on such companies will overshadow any gains in good corporate governance practices achieved by large, institutionally-held companies.

F. Perception

Aside from the substantive impact of the rule, the NYSE should also consider the impact of perception alone. How will the rest of the world perceive a new rule that does little if any harm to most NYSE listed firms but severely harms many NASDAQ or AMEX listed companies, especially when the basic research relating to the impact on NASDAQ or AMEX companies was apparently never even requested?

G. Proposed Solution

The Altman Group proposes that the NYSE delay the formal implementation of this rule change, or make its application voluntary, until or after the SEC agrees to classify all owners as Beneficial Owners (BO's) and eliminate the right of any owner to choose or to have his or her broker choose classification as an Objecting Beneficial Owner (OBO) for any account.

Below is an explanation of why it is critical to also eliminate OBO status to ensure that good corporate governance prevails and dispel misconceptions regarding OBO status.

TheAltmanGroup

H. Benefits of eliminating OBO status:

1. **Permits all companies a fair chance to solicit a quorum** - Companies that would have "low vote" problems under the proposed Rule 452 change would have the opportunity to at least actively solicit their beneficial owners and thereby increase the likelihood they would reach a vote of 50% or more of outstanding shares for directors.

2. **Removes Overvote Problem** - The problem of overvoting will likely cease to exist if member firms are forced to have controls in place and ensure their proxy positions reported to ADP are correct and in balance with the DTC position. Brokers and banks could be required to produce a list of all beneficial owners for each company's record date for an annual or special meeting and then to tie the total number of votes by each firm to the shares held by them in DTC as of the voting record date. This would force the firms to be in balance and eliminate the overvote problem that the NYSE so recently took action on.

3. **Allows companies to identify their owners** - According to media reports, the SEC has been examining the services of certain firms that provide "stockwatch" services. Adopting our proposed change to the beneficial owner access rule and permitting companies to obtain this information on a periodic basis would likely obviate the need for many companies to rely on these outside service providers to determine who their owners are. By making all shareholder names available to a corporate issuer, the process of open elections will certainly be enhanced, thereby improving corporate governance. Additionally, the inefficient process of communicating and coordinating with third parties in order to determine who owns shares in a company will also be reduced while direct communications with owners will be enhanced.

4. **Levels the playing field for companies faced with challenges for corporate control** -- Given the current trend of hedge fund activism and the particular vulnerability of companies with primarily retail based shareholders[5], elimination of OBO status gives such companies a legitimate chance to communicate with and solicit their shareholders in the face of activist pressure rather than simply cave in to the activist or sophisticated investor's demands in lieu of a costly battle that will be very difficult for them to win without access to OBO information.

   If the PWG and the NYSE members firms are cognizant of how hedge funds pursue and implement activist agendas and the impact of such activity on shareholder meetings, then they should also be well aware that implementing the proposed Rule 452 change without a corresponding shift in policy on OBOs merely replaces one issue with another. For a large number of companies, having one group of parties voting all non-directed shares for company-nominated directors would be replaced by the more problematic situation of having another group of holders, this one quite small, act in concert with each other. These parties can rapidly acquire positions before a record date or, through the investor grapevine, hear of a pending action, buy shares and then work in concert to be sure a party leading the charge is able to demand and receive board seats or other concessions. Such situations may result in a change of control of the board without other shareholders perhaps even being aware of what has happened.

[5] Please see the attached a copy of a report The Altman Group circulated this past spring that focuses on the outcome of activist hedge fund pressure on corporations and their boards. It is worth noting that of 20 companies targeted, 15 were forced to make changes to placate the activists.

I. OBO Status and Dispelling Misconceptions

The traditional reason given by NYSE brokerage firms for maintaining OBO status, i.e., the protection of shareholder privacy and identity, is most likely a false one. I believe the true historic impetus for OBO registration is more likely to keep confidential the identities of the largest, most sophisticated or wealthiest clients of NYSE member firms. This is a long-held assumption of a number of public corporations, proxy solicitors, stock watch firms and certain other interested parties.

As the information presented in the ORC study shows that 95% of all beneficial owners would agree to have their name disclosed if a $50 fee was imposed, this clearly undermines the "confidentiality" rationale that brokers have historically made with regard to why OBO registration is necessary. In fact, I believe this data strongly supports my argument for eliminating OBO status.

It seems fundamentally unfair to perpetuate a system geared to protect the identity of 5% of the population when it is elements of that very 5% who most likely are targeting corporations in hedge fund-sponsored fights. This is especially so when the corporations targeted by the hedge funds are not able to reach out for support from OBO accounts that might be more inclined to support management than the hedge fund allies hidden by OBO registration. If OBO status is eliminated, any holder can choose to pay a fee to register its shares in nominee name, thereby shifting some of the costs for anonymity from corporations to shareholders who choose to hide their identity.

In fact, the research also seems to suggest that many retail owners end up as OBOs not because of their own actions, but because their individual broker has checked off the OBO box on the account form, perhaps without even asking the client for permission to do so. We therefore have a situation where sophisticated parties choose to check OBO status and are hidden from corporations while many retail owners do not check the OBO box themselves but are nonetheless hidden from corporations. I believe this is an unfair situation that must be addressed in the context of the proposed rule change. As such, it appears to me that the PWG should have been more forceful in its position with regard to the OBO issue than it was.

J. Composition of the PWG – Additional Questions and Considerations

Aside from the substance of the PWG's recommendations, I believe that the PWG could have done more to include representatives from certain key constituencies among its members and interviewees. These are constituencies that will be most affected by these changes (e.g., companies with large retail-based shareholders) as well as parties with significant and highly relevant experience (e.g., proxy solicitors and transfer agents).

Why did the PWG not include one or several members of any of the following groups?

1. **Companies held by retail owners** - Of the public companies represented on the PWG, I believe it would be relevant to have information about the percent of each company's shares that are held by institutions. My sense is that retail-held firms are not as fully represented as institutionally-held firms on the PWG.

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2. **Proxy solicitation firms** - Why were there no participants in the PWG who worked for a proxy solicitor? There are as many as 20-30 account executives and management personnel at various proxy solicitation firms that have each worked on at least 500-1,000 annual meeting solicitations. It would seem to make sense to have at least one person trained in the annual meeting solicitation process to be appointed to the PWG. While we appreciate that one proxy solicitation firm was interviewed as part of the PWG's process, we do not believe that satisfies the need to have a representative from this industry as a member of the PWG.

3. **Transfer agents** - Similarly, why were there are no participants in the PWG who work for a transfer agent? Certainly there are dozens of account representatives and management personnel who have also assisted on hundreds of annual meetings each and who are intimately familiar with voting, overvoting and mailing issues. The PWG would certainly benefit from having a representative from this industry.

In general, I wonder about the level of experience PWG members actually have in proxy solicitations. For example, how many annual meetings have each of the PWG members actually led the solicitation process for? I believe this information would be relevant, and my sense is that the number is small and that the PWG members have limited personal experience managing the logistics and the actual issues involved in securing a vote.

K. Conclusion

We believe there is still considerable background research that the Working Group needs to undertake before the NYSE should consider adoption of the recommendation to change Rule 452. Furthermore, we hope that such a research effort will lead to a revised recommendation in which the NYSE strongly recommends that the SEC move to full disclosure of all beneficial owners and away from OBO registration as a possible designation for street name owners. Such a system already exists in many other countries with sophisticated market regulatory structures. Why not here in the U.S.?

It appears to me that the PWG could have been more forceful in its position with regard to the OBO issue than it was. The research already completed for the PWG by ORC and the data we believe ADP can/will provide upon request of the PWG with regard to NASDAQ companies -- divided into large-cap versus small-cap or institutionally versus retail held companies -- will create momentum for the PWG to ask the SEC to time a requirement for full beneficial ownership disclosure to the implementation date of the proposed change to Rule 452. Unless such a position is taken and endorsed by the SEC, the NYSE should not implement the proposed rule change or, alternatively, should make participation under the new rules optional.

It is my view that any rule change request from the NYSE that seeks less than full beneficial owner disclosure at the same time as the proposed rule change occurs will be unfair in the extreme to a large group of companies whose shareholder profile differs markedly from that of the group ADP surveyed at the request of the PWG.

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The Altman Group recommends that the NYSE:

1) Suspend consideration of this issue until additional information is gathered and a new round of testimony is taken from a more representative sample of advisors and corporations who might have views different from those previously presented to the PWG, and

2) Declare that any future consideration of the change proposed will require prior or concurrent action by the SEC with regard to the elimination of OBO registration.

Thank you for your consideration of this submission. We look forward to the opportunity to discuss our concerns with the PWG.

Respectfully submitted,

Kenneth L. Altman

Kenneth L. Altman
President

May 23, 2007

Securities and Exchange Commission
100 F St., N.E.
Washington, D.C. 20549
Attention: Nancy M. Morris, Secretary

Re: File No. 4-537
Rountables Regarding Stockholder Rights and the Federal Proxy Rules
Proxy Voting Issues: Voting Integrity

Ladies and Gentleman:

I appreciate the opportunity to provide comments on behalf of The Altman Group related to topics to be discussed at the roundtables hosted by the Securities and Exchange Commission (the "SEC") to address stockholder rights and the federal proxy rules.

The Altman Group is a rapidly growing proxy solicitation firm serving hundreds of public company and mutual fund clients each year. My background includes over thirty-five years of proxy industry experience, starting in the back offices of a brokerage firm where I worked in college, to founding and running the proxy department for Hill & Knowlton for eighteen years, to founding The Altman Group winner of the last two TOPS Awards as the highest rated proxy solicitation firm in the U.S.

Summary

Our issue of concern: The inequitable impact of the proposed change to NYSE Rule 452 (eliminating broker voting on director elections) on public companies primarily held by retail owners.

Our proposed solution: Eliminate the distinction between NOBO and OBO and to create a new unified category of ABO (i.e., All Beneficial Owners) solely with regard to record dates for votes at companies' annual or special meetings.

Discussion

While there are many issues that may be covered at the sessions to be held later this week, we want to focus on the inequitable impact of the proposed change to NYSE Rule 452 (eliminating broker voting on director elections) on public companies primarily held by retail owners. We suggest that the SEC consider implementing a single interim solution that we believe will help deal with a number of the concerns that have been expressed. The proposed solution is to eliminate the distinction between

NOBO and OBO and to create a new unified category of ABO (i.e., All Beneficial Owners) solely with regard to record dates for votes at companies' annual or special meetings.

We view this solution as interim based on the assumption that there may be later changes to the proxy voting process. However, since any overhaul will no doubt take time, there is clearly a need for a short-term, common-sense solution in the interim. This proposed solution may serve as an interim step to broader overall disclosure, or it may in fact end up solely as part of a new approach to increasing disclosure of beneficial ownership with regard to annual or special meetings.

Here is our understanding of the proposed changes to NYSE Rule 452 and the difficulties that may result for many companies as they seek to get a majority of shares voted for the election of directors. Smaller companies lacking a significant institutional owner base will face an added burden with regard to gaining a quorum for the election of directors, particularly in terms of ensuring that the vote level they desire is achieved. Larger companies with 50-80% or more of their shares held by institutions will be less affected by the rule change as the shares owned by these firms are generally not voted by brokers under Rule 452 anyway. Also, these larger companies will typically have enough votes cast by a small number of large owners to ensure that directors receive votes from at least 50% of the outstanding shares.

However, for companies with many small retail holders in "street name" that cumulatively own the vast majority of the shares, the situation is rather different. These companies will often need to retain a proxy solicitor to call NOBOs and other small shareholders who typically do not vote in great numbers, due to apathy and perhaps the mistaken belief that their shares will be represented at the meeting regardless of whether or not they actually return a proxy. For decades NOBOs (and before they were NOBOs, most street holders) believed their brokerage firm would vote for them if they did not return a proxy. Nothing has happened to change that view

While an education program might help deal with this issue to some extent, the NYSE has yet to introduce an education program to inform holders of the consequences of their inaction, and it is unlikely such a campaign can be geared up in time and/or implemented in a meaningful way between now and January 2, 2008 (the start date for the change to Rule 452.) As a result, a number of companies will find themselves at a material disadvantage vis-à-vis other companies.

Certainly a change that forces smaller companies to spend more money seems a peculiar way to update a system to enhance shareholder democracy, especially when larger companies may spend less money than previously, in part by using the new "notice and access" model. In fact, the consequence of this change is really enhanced power of large share owners, some of whom are short-term owners looking for a quick profit and an exit strategy from an investment. This change actually will tend to concentrate voting power into the hands of more sophisticated, shorter-term owners at the expense of longer-term small retail owners.

Is corporate governance served by effectively disenfranchising millions of small owners who, based on past experience, believe their shares may be voted for them and who will simply discard their proxy in great numbers as they have done in past years?

We do not believe that the SEC would want to create a system where a company's ownership profile (small vs. large owners) becomes the primary factor that determines whether they can get directrs

elected in an environment moving toward a majority vote standard without expending substantially greater money on the effort than in years past.

To compound the problem, companies that need to reach their OBOs currently only have one option – one or more mailings via Broadridge.

Much has been written on the costs associated with street mailings, and it is unnecessary to rehash that issue except to say that the people who make money from the current system of mailings, i.e., the brokers, banks and their agent Broadridge, will gain a conspicuous benefit through increased fees paid by companies who have shareholder bases that are geared to retail vs. institutional ownership. This seems unfair on two levels: 1) because smaller companies have less money to spend on such activities, and 2) because the beneficiaries of the extra spending will be the brokerage community, which has historically been one of the main proponents of leaving the NOBO/OBO system intact.

Additionally in the last year there has also been much written about issues surrounding a process called empty voting. There have also been concerns expressed about the use of loaned shares to alter the voting rights just before the record dates for meetings.

The collective impact of these issues have led us to contemplate a simple solution to helping all companies in an equal fashion in their efforts to adapt to and deal with the consequences of the proposed change to NYSE Rule 452.

Our solution requires no new technologies or software to be developed. It merely requires that the SEC mandate a change to the NOBO/OBO legislation concurrent with any change to NYSE Rule 452. The change would require that any company facing a record date that will be affected by NYSE Rule 452 have the right to request a complete list of all NOBOs and OBOs, i.e., an ABO (All Beneficial Owners) list.

While it is anticipated that the NYSE may propose a new process whereby all accounts are asked to again confirm their NOBO/OBO status, this approach simply doesn't go far enough. It may in fact cause more people to opt for OBO status. What is needed is a system that creates a true register of owners able to vote at a meeting rather than perpetuate a system that no longer reflects the standard that other global markets are moving to in terms of establishing the identity of owners eligible to vote at a meeting.

While we originally considered our idea for ABO rule changes within the context of the NYSE's proposed changes to Rule 452, we now believe that enabling legislation to support ABOs for record dates makes sense regardless of what the NYSE might eventually propose.

Much has been made in the past by investors who say they do not wish their ownership positions to be disclosed because it might reveal their trading strategy. However, this argument does not apply here as the information is not made public but is available ony to the issuer and only for that one record date per year (presuming the company does not also have a special meeting for some other purpose at another time.)

In fact we think if the SEC were to adopt this idea it would also help address other issues as well (e.g., identifying which institutions had shares out on loan) and the SEC could also add a new element to this

disclosure regime to require all investors to disclose stock borrowing and derivative transactions that have an impact on voting rights as of record dates for meetings.

In effect, the disclosure of ABOs should be viewed as a simple way to move the voting system in the United States to a point where the identity of all parties entitled to cast votes at the meeting is brought into clear view. Any discussion of transparency and the problem of overvotes by brokers can be addressed via this simple change.

Certainly there were protests twenty years ago when NOBO legislation was put in place. Since then, however, there have been few if any problems associated with the disclosure of such information. While howls of protest would likely be heard again in response to our proposed solution, it should be noted that any objecting party is likely already disclosing its ownership in United Kingdom-based companies and other markets requiring such information.

To be competitive for new company listing purposes, the U.S. must match the successful efforts others are making. With interest in the identity of shareholders at an all-time high, ABO legislation would help convince foreign companies as to one of the benefits of continuing to list on one of the U.S. exchanges.

Let me review some of the benefits that we believe are achieved through the adoption of ABO disclosure rules.

1. A company that knows the identity of all of its OBO owners can directly solicit them to vote at the annual meeting. Even though the OBO holds through street name and in all likelihood will vote through Broadridge, the company can encourage the shareholder to vote on the electronic platform or dial in toll-free to the voting systems long ago established by Broadridge.

2. Votes cast through Broadridge's voting platform are much less costly to a company than votes returned by mail.

3. The ability to mail a reminder notice directly to owners reduces the costs versus having to paying a resolicitation fee to Broadridge. This permits a company to reduce the charges associated with follow-up solicitations. It also gives a company the opportunity to inform the owner directly that the owner's vote will not be counted if it does not return a proxy or use the electronic or telephonic voting platforms available.

4. A full list of owners, segregated by firm and share amount, will enable companies to easily identify overvote situations, i.e., situations where brokers or banks are identifying more shares than The Depository Trust Company's records indicate are eligible to vote.

5. A company will no longer need to rely as heavily on the 13-F information to determine the ownership of its largest holders for voting purposes. 13-F filings are often quite deficient and misleading, as they are usually out of date and do not reflect the true voting position the institution may control due to sales or purchases of shares or any stock lending or borrowing. It is very difficult for a company, even one using a stockwatch product, to get an accurate updated list of institutional holders.

6. If our proposal also led the SEC to require disclosure of derivative transactions that affect voting rights, a company could then gain a realistic understanding of which parties will have the votes at a meeting. This is particularly important with regard to contested elections or votes on corporate transactions such as a merger vote. The separation of economic interest and voting rights is an issue that many are now asking for action on. This approach is a good first step in that effort.

I hope that our analysis and proposed solution helps shed light and provide options to the SEC in addressing certain issues it faces with regard to shareholder voting.

If I can be of service or answer any other questions or provide additional information, please contact me at (212) 681-9600 or by e-mail at kaltman@altmangroup.com.

Sincerely,

Kenneth L. Altman