



**Via Electronic Mail – ([rule-comments@sec.gov](mailto:rule-comments@sec.gov))**

Elizabeth M. Murphy  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**Re: File No. SR-NYSE-2006-92  
Proposed Rule Change to Eliminate Broker Discretionary Voting for the Election of Directors**

Dear Ms. Murphy:

On behalf of the Securities Industry and Financial Markets Association ("SIFMA"), thank you for the opportunity to comment on the NYSE's proposed rule change to amend Rule 452 to eliminate broker discretionary voting for the election of directors. The proxy voting and shareholder communication system is integrated and complex and a change in one part of the process impacts many of the other parts.

SIFMA strongly believes that the rights and interests of shareholders should be the focus of any discussions on the proxy process. Furthermore, any review of the proxy voting and shareholder communication system should focus on enhancing the current system through the use of new technologies and other means while ensuring the efficiencies that currently exist in the system are not lost.

SEC Chairman Schapiro stated last week in her testimony before the Senate Committee on Banking, Housing and Urban Affairs, that she intends "to make proxy access -- meaningful opportunities for a company's owners to nominate directors -- a critical part of the Commission's agenda in the coming months." We believe it is in the interest of investors, issuers, broker-dealers and all other stakeholders to be part of a review of the proxy voting and shareholder communication process.

Many of the comments that have been received and posted by the SEC relative to NYSE's proposed rule change to amend Rule 452 speak to other components of the overall proxy process, and in some cases, make assertions that we believe are inaccurate and promote confusion. As a result, SIFMA would like to take this opportunity to present our observations on several of these issues.

**Effective Communications** – It has been asserted that expensive rules have made it impossible for public companies to know who their owners are and to communicate

effectively with them. To the contrary, issuers can communicate effectively to shareholders through established, robust and efficient systems currently in place. This includes direct solicitations to investors who desire them, and for those exercising their right to privacy, through broker-dealers via these same systems and processes.

SIFMA strongly believes that investors, like other consumers of products and services, have a right to privacy. Views to the contrary neglect the need to maintain investor privacy, which is protected by the SEC Rule 14b-1 (Securities Exchange Act of 1934) pertaining to Objecting Beneficial Owners/Non-Objecting Beneficial Owners (OBO/NOBO). As you are aware, this rule was adopted in 1983 by the SEC based upon recommendations from The Advisory Committee on Shareholder Communications.

Intermediaries protect confidentiality for their clients, who have a choice of their OBO/NOBO designation at the time of account opening. As previously stated, issuers can send any communications they choose to shareholders (via these intermediaries). These communications can include requests to shareholders to change their decisions to remain anonymous or to provide direct contact information to issuers. These communications can also direct shareholders to websites or 800 telephone numbers of the issuers' design.

**Voting Rights** - With regard to the “street name” system, it has been asserted that the voting rights of third-party record holders are not passed on via proxy to their customer; instead, these financial intermediaries retain the right to vote shares. Voting rights are passed on to the shareholder of record. While it has been the view of some industry participants that the voting rights stay with the intermediary under state corporate law, in fact the right to vote is granted to the record holder (DTC's nominee Cede & Co.), who in turn grants it to the participant firms (intermediaries), who in turn grant it to their clients. Intermediaries have an efficient network to communicate with their clients and receive and tally voting instructions, including electronic methods. While some intermediaries will vote the shares for which no instructions were received on routine matters as rules currently permit, they do so at the request, and for the benefit, of issuers in order to allow them to meet the quorum for their annual meetings. A number of intermediaries have voluntarily implemented proportional voting, which votes unvoted retail shares for routine matters in proportion to the voting instruction each intermediary receives from its clients. SIFMA believes that proportional voting in routine matters is an appropriate method of representing the intent of the intermediaries' clients and also alleviates issuers' concerns regarding achieving a quorum for their annual meeting.

**Competition in Proxy Processing** – It has been the position of some that the lack of competition in proxy processing services and regulatory rules that permit a monopoly (Broadridge Financial Solutions) to exist should be replaced with rules that permit competition. In fact, there are no rules that prevent companies from entering the proxy arena. This is evidenced by the existence of companies such as INVeSHARE and Mediant Communications. Moreover, the proxy processing system developed by Broadridge has evolved over many years with the help of various constituencies

including banks, brokers and issuers. Today, the system effectively balances the interests of all participants as well as complying with SEC and SRO regulations. This service has resulted in economies of scale and savings for all participants. In addition, the NYSE Proxy Working Group has also recognized the value of this service in their report of recommendations dated June 5, 2006; “The Working Group recognizes that a benefit of this system is that ADP [now known as Broadridge], as the agent for almost all banks and brokerage houses, has generally proven its ability to distribute proxy materials in an organized and timely fashion, which is critical to the functioning of the corporate governance system for American publicly traded companies.” Finally, we are not aware of any specific alternative system that has been proposed containing a detailed analysis reflecting how that alternative would be better from an efficiency or cost perspective, or how it would better serve the interests of shareholders.

**Overvoting and Empty Voting** – It has been asserted that brokers are often unable to accurately calculate the number of equity shares their customers are entitled to cast when a record date is established. In fact, broker-dealers are required to have robust and precise accounting systems in place to ensure the integrity of their records of share ownership. These systems are subject to review by regulators. Broker-dealers also have reconciliation processes in place to ensure their records of share ownership are accurately updated to account for events such as unsettled transactions (fails) and securities lending transactions.

There have been a number of concerns about the impact of securities lending and derivatives trading on proxy voting. In doing so, common misconceptions are repeated such as borrowers of securities obtaining enhanced voting power by virtue of share lending agreements. In fact, broker-dealers borrow shares to complete delivery to buyers who are entitled to all of the typical rights of shareholders.

Thank you again for the opportunity to comment. We look forward to participating in a review of this most important issue as the SEC unveils its agenda in the coming months.

Sincerely,

Thomas F. Price  
Managing Director