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March 26, 2009

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Via e-mail: rule-comments@sec.gov

Re: Proposed Amendment to New York Stock Exchange Rule 452 (Release No. 34-59464; File No. SR-NYSE-2006-92)

Dear Ms. Murphy:

On behalf of Eli Lilly and Company, I am writing to comment on the proposal by the New York Stock Exchange (NYSE) to amend NYSE rule 452 to eliminate broker discretionary voting on the election of directors.

Broker discretionary voting is just one issue of many in the integrated and overly-complicated proxy voting and shareholder communication system that requires attention. The Millstein Center for Corporate Governance and Performance, part of the Yale School of Management, reported on its study of the proxy advisory firms earlier this month.¹ The conclusions echo our concerns. Overall, the report “finds that the proxy voting system in the US . . . is chronically subject to criticism that it is short on integrity sufficient to ensure trust.” It finds further that “[t]hreats include conflicts of interest, opacity, technical faults in the chain by which ballots are transmitted, and a shortage of resources devoted to informed decision-making.” These issues were also the subject of an SEC Roundtable in 2005, but no further action has been taken until the proposal above.

I refer you to comments provided by the Business Roundtable and by the Society of Corporate Secretaries and Governance Professionals, with which Eli Lilly and Company agrees. In summary, we believe that amending Rule 452 to eliminate broker discretionary voting in the uncontested election of directors could result in significant consequences to shareholders and issuers that we do not believe have been adequately addressed. For example:

¹ That study, entitled “Voting Integrity: Practices for Investors and the Global Proxy Advisory Industry,” is available at <http://millstein.som.yale.edu>.

Ms. Elizabeth M. Murphy

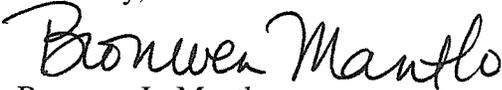
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- Eliminating broker discretionary voting in uncontested director elections runs the risk of disenfranchising shareholders, as it may be counter to their assumptions about broker voting, as demonstrated by the survey appended to the NYSE rule filing. Retail shareholders are voting in declining numbers, so that the problem of under-representation may be exacerbated by these changes. Unlike institutional investors, retail shareholders do not have access to an efficient mechanism to analyze or register proxy voting across their portfolios.
- The proposed amendment would likely increase the cost of uncontested director elections by requiring issuers to substantially increase communications with their shareholders about the importance of voting in director elections. In this regard, the current shareholder communication rules, which preclude direct communication between issuers and many of their shareholders, present a significant obstacle to efficient communication.
- The voting recommendations of proxy advisory firms would have a far greater influence on the outcome of director elections. The Millstein report referenced above noted that some institutional investors delegate all proxy voting responsibility to their advisors, and even among those that retain in-house analytical expertise, some recommendations from proxy advisors are accepted without further analysis. Proxy advisory firms are not regulated.
- The loss of the broker discretionary vote in uncontested director elections could result in quorum problems at some companies – a problem which should not be band-aided by including unnecessary proposals considered “routine” under Rule 452, which has been suggested by other commenters.
- The interaction of the amendment to Rule 452 with a majority vote standard in uncontested director elections, which Lilly and many other companies have adopted, is likely to raise substantial questions. Shareholders may or may not understand the impact of their failure to vote and the consequences and costs of failed elections.

For these reasons, Eli Lilly and Company urges the SEC to undertake a comprehensive review of the proxy voting and shareholder communication system and refrain from adopting piecemeal changes, such as the proposed amendments to Rule 452. Most significantly, the proposed amendment runs the risk of disenfranchising large numbers of individual shareholders. We urge the SEC to extend the comment period beyond March 27, 2009, in order to give interested parties an opportunity to comment, and to give the commission sufficient time to address these important issues in a more comprehensive manner.

Sincerely,



Bronwen L. Mantlo

Associate General Counsel and Assistant Secretary