



March 27, 2009

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

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
1000 F Street, NE
Washington, DC 20549-1090

Re: Proposed Rule Change, as modified by Amendment No. 4, to Amend New York Stock Exchange (“NYSE”) Rule 452 and Listed Company Manual Section 402.08, to eliminate Broker Discretionary Voting for the Election of Directors, Release No. 34-59464; File Number SR-NYSE- 2006-92

Dear Ms. Murphy:

Computershare and Georgeson Inc. appreciate the opportunity to respond to the request for comments made by the Securities and Exchange Commission (the “Commission”) in its February 26, 2009, release regarding a Proposed Rule Change, as modified by Amendment No. 4, to amend NYSE Rule 452 and the Listed Company Manual Section 402.08, to eliminate Broker Discretionary voting for the Election of the Directors (the “Proposed Rule 452 Change”).

Computershare is a global leader in transfer agency, employee equity plans, proxy solicitation and other specialized financial, governance and communication services. Many of the world's largest companies employ our innovative solutions to maximize the value of their relationships with investors, employees, customers and members. Computershare has over 12,000 employees across the world and serves 17,000 corporations and 100 million shareholder and employee accounts in 17 countries across five continents. Georgeson Inc., which is owned by Computershare, is a global leader in providing strategic proxy and corporate governance advisory services to corporations and shareholder groups working to influence corporate strategy. For over half a century, Georgeson has specialized in complex solicitations, such as hostile and friendly acquisitions, proxy contests and takeover defenses. In 2008, Georgeson was chosen as the proxy solicitor for more M&A transactions worldwide than any other firm. The firm also provides issuers with expertise in corporate events solutions, such as post-merger unexchanged holder programs and information agent services.



We have been actively involved with the NYSE on proxy reform issues since 2001, when the former Proxy Voting Review Committee began analyzing proxy distribution fees. We have made formal submissions to the NYSE and the Commission in the past on proxy reform issues. Our employees interact, on a daily basis, with interested parties on all sides of issues concerning proxy reform. Our clients include a wide range of both companies and shareholders. Our employees remain active in professional organizations that represent different points of view when analyzing proxy reform issues.

Computershare and Georgeson support the work of the Commission and the NYSE and recognize the challenges of modernizing a proxy solicitation process that has evolved over many years and involves many constituents with differing viewpoints. Our efforts in this area are focused on protecting the interests of both companies and shareholders, as well as other market participants, by creating more efficient and cost-effective communications and proxy solicitation processes, increasing the transparency of share ownership and ensuring the integrity of the votes cast. Of great importance to us is the ability of companies and shareholders to communicate more efficiently, effectively and directly with each other.

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With respect to the Proposed Rule 452 Change, Computershare and Georgeson strongly recommend that the SEC consider and resolve the following issues at the same time that it considers the Proposed Rule 452 Change, as part of a new regulatory framework that takes into account all of the currently significant proxy voting issues and procedures:

1. Address the Need to Have a Quorum at Shareholder Meetings. One of our ongoing and primary concerns is the potential difficulty in obtaining a quorum at shareholder meetings, if the broker discretionary votes are not counted at such meetings where all items are non-routine. We believe that this would be especially true at smaller and medium-sized companies, which historically have had a higher level of retail, versus institutional, shareholders. As a result, it would become more time-consuming and costly to achieve, if at all, the necessary quorum to hold a shareholders meeting. The additional costs would include follow-up mailings to, and telephone solicitation of, identifiable shareholders who have not yet given voting instructions to their brokers.

One potential permanent or interim solution to this problem would be to allow broker discretionary votes to be counted for quorum only purposes. This would at least ensure that shareholder meetings can be held until such time as more comprehensive reforms (some of which are discussed below) are implemented and become common practice. As a related matter, the final Rule Change to Rule 452 should clarify that the broker discretionary vote on other “routine” matters, such as the ratification of auditors, can be counted for quorum purposes.

2. Enable Company Identification of and Communications with All Shareholders. We continue to be concerned with the inability of companies to identify and to communicate directly with all of their shareholders, and particularly OBOs (objecting

beneficial owners, who hold their shares through brokers, but have not opted to identify themselves to companies). It is difficult for companies to communicate directly with OBOs who do not provide voting instructions to their brokers on non-routine matters. This issue raises the same problems noted above with respect to obtaining a quorum and increasing the costs of soliciting shareholder votes.

If the SEC permits the NYSE to adopt the Proposed Rule 452 Change, we strongly recommend that SEC simultaneously eliminate the distinction between OBOs and NOBOs (non-objecting beneficial owners, who hold their shares through brokers, but permit themselves to be identified to companies). This would greatly enhance the ability of companies to identify and to communicate directly with all of their shareholders. It would also increase ownership transparency in the proxy process. We believe that the OBO/NOBO distinction could be eliminated in a way that would greatly enhance and protect the voting system as a whole, while still providing confidentiality for sensitive personal information of OBOs.

Under the current system, both individual and institutional shareholders can be OBOs, who hold their shares in bank or brokerage accounts. The banks and brokers have a full set of confidential information about these shareholders, including, *e.g.*, their names, addresses, telephone numbers, e-mail addresses, number of shares held in each company, and tax identification numbers. Banks and brokers already outsource the mailing of all shareholder communications to a third party, Broadridge Financial Solutions Inc. (“Broadridge”), and thus are already turning over to a third party confidential information: their customers’ names, addresses and the number of shares held by their customers in each company.

We believe that many individual OBOs may have forgotten or be unaware¹ that they have selected that status for themselves, especially if they did so long ago, when company-shareholder communication was not as vital a part of the proxy voting process as it is today. Many may not know what it means to be an OBO and that they are unable to receive communications directly from the companies in which they own stock.

Although we respect the desire for shareholder confidentiality, we believe that the OBO/NOBO distinction could be eliminated in the following limited manner:

a. Institutional OBOs already have their names, addresses and shareholdings made public, when they file this information on their quarterly Form 13F filings with the SEC. Eliminating the OBO/NOBO distinction for these shareholders would only minimally decrease the time lag before which, and increase how frequently, the amount of their shareholdings become known to the companies whose shares they hold.

¹ See the “Investor Attitudes Study” prepared for the NYSE Group by the Opinion Research Corporation, dated April 7, 2006, pages 3, 8 and 9, for statements and data that support the point that many investors are confused as to whether they selected or were even asked to select NOBO or OBO status when they purchased their stock.

b. For all OBOs (as is the case for NOBOs), only their names, their addresses and the amount of their shareholdings would be required to be disclosed to the companies whose shares they hold. No telephone numbers, e-mail addresses, tax identification numbers or any other information could be disclosed. Companies would be permitted to use the limited information for the sole purpose of shareholder communications. Companies would be forbidden from selling the information to third parties or from using the information for any other purposes, such as for marketing company products or services.

c. With such limited disclosure about their shareholders, companies would still be able to significantly reduce their shareholder communications costs, if they could choose to communicate directly to all of their shareholders, based on competitive market pricing. Under the current system, company mailing costs are determined by Broadridge (which faces no competition for its mailings) and the NYSE (which has been brought into the business of setting fees for mailing shareholder communications under NYSE Rule 465). We strongly believe that the market would be better served by facilitating competition for investor communication services, thereby enabling companies to choose their own service providers and negotiate the prices for such services in a normal competitive commercial environment.

d. Elimination of the OBO/NOBO distinction would also help to address the ongoing issues of stock lending, over-voting and “empty voting”. These issues can result in the potential disenfranchisement of shareholders in the voting process and, in the worst case scenarios, compromised voting outcomes. With no OBO/NOBO distinction, banks and brokers would be forced to produce a list of all of their record date beneficial shareholders and then tie the total number of votes held by each firm to the shares that each firm holds at the Depository Trust and Clearing Corporation (or “DTCC”) on such record date. This would lead to further transparency and confidence in the entire voting process.

3. Enhance Investor Education and the E-Proxy Rules. We believe that investor education is vitally important.² Past studies and current experience with the electronic distribution of proxy materials to investors have revealed an additional need for significant investor education (particularly for retail and registered shareholders). We are fully supportive of efforts to educate investors on how their stock is held, the voting process for their shares (which has become more complicated with the electronic distribution of proxy materials or “e-proxy”, as well as proportional or non-voting by brokers which still retain discretionary voting on routine matters), what happens when their shares are lent out by their brokers over a record date for a shareholders meeting, and how they and the companies in which they invest may communicate better with each other.

² This belief is strongly supported (particularly with respect to amending NYSE Rule 452) in the June 5, 2006 “Report and Recommendations of the Proxy Working Group to the New York Stock Exchange”, pages 4 and 22.

As one way to enhance investor education, we recommend that the SEC permit companies to include, with their initial e-proxy mailings, an educational insert explaining in Plain English what e-proxy is.

We believe that this educational insert would also be a significant step forward in curtailing the ongoing drop-off in the retail and registered vote, which has disproportionately resulted in an increase in the influence of the institutional shareholder vote. Without this important investor education step being taken in conjunction with the Proposed Rule 452 Change, some companies may be discouraged from using e-proxy and, therefore, they would lose the associated cost savings opportunities.

4. Coordinate with Proxy Access and Advisory Votes on Executive Pay. There appears to be a strong likelihood that new federal laws and regulations will be adopted this year (a) permitting shareholder access to a public company's proxy statement for the purpose of director elections ("Proxy Access") and (b) requiring an advisory vote on executive pay for potentially all U.S. companies subject to proxy regulation under the Securities Exchange Act of 1934 ("Say-on-Pay"). These are both items for which companies will want to significantly engage their shareholders. For this reason and those mentioned above, we recommend that if Proxy Access and Say-on-Pay are likely to be enacted in the coming months, the SEC and Congress should work closely together so that these changes, the Proposed Rule 452 Change and the other recommended changes noted in this letter can become part of an overall review and revamping of the shareholder voting and communications process, instead of considering each issue in isolation.

5. Acknowledge the Significant Growth and Voting Power of the Proxy Advisory Firms. Finally, we wish to note the growing influence of the proxy advisory firms (such as RiskMetrics Group, Glass Lewis & Co. and Proxy Governance Inc.). As a result, for many companies, the proxy voting recommendations of these firms have taken on a much greater importance in determining the vote outcome at their shareholder meetings.

We recognize that many institutional investors do not have the resources to sort through the very complex disclosure in proxy statements for hundreds, if not thousands, of companies in often a very short time period, in order to make intelligent proxy voting decisions, consistent with their fiduciary obligations with respect to the assets held in their funds. For that reason, these investors have needed to increasingly rely on other resources when making their voting decisions. The proxy recommendation reports of the proxy advisory firms have, thereby, provided an increasingly important and growing resource for these institutions to help them determine how to vote their shares.

As a result of the growing influence of the proxy advisory firms, we believe that it becomes even more important to enhance direct company-shareholder communications by implementing the steps outlined in this letter.

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We appreciate the opportunity to comment on the Proposed Rule 452 Change. If you would find it useful for us to provide you with further information, please do not hesitate to contact us at 212-805-7000.

Respectfully submitted,



Paul Conn
President, Global Capital Markets
Computershare Limited



David Drake
President
Georgeson Inc.

cc: The Honorable Mary Schapiro
The Honorable Kathleen L. Casey
The Honorable Elisse B. Walter
The Honorable Luis A. Aguilar
The Honorable Troy A. Paredes