



CENTER FOR CAPITAL MARKETS
C O M P E T I T I V E N E S S

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March 27, 2009

Ms. 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

Dear Ms. Murphy:

The U.S. Chamber of Commerce (“Chamber”) is the world’s largest business federation, representing more than three million businesses and organizations of every size, sector, and region. The Chamber’s Center for Capital Markets Competitiveness (“CCMC”) works to ensure that our nation’s capital markets are the most fair, efficient, and innovative in the world. We appreciate the opportunity to comment on the New York Stock Exchange (“NYSE”) proposal to amend NYSE Rule 452.

As stated in our November 13, 2006 comment letter, the Chamber strongly supports the goal of improving communications between companies and shareholders and creating enhanced efficiencies for issuers, investors, and all proxy participants. However, we remain concerned that the proposed amendment to make uncontested elections of directors a “non-routine” matter would create negative and unintended consequences for companies that are publicly traded in the U.S.

The proposal would make it difficult for companies to meet quorum requirements, resulting in uncertainty and higher proxy solicitation costs

The fundamental policy basis underlying Rule 452 is to bridge the voting gap for companies that struggle to obtain a quorum. The proposed amendment would greatly reduce the number of votes cast in uncontested director elections, making it difficult for companies to obtain quorum unless their meetings include other “routine” proposals. This would significantly increase uncertainty for companies and force them to incur much higher proxy solicitation costs. This unintended

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consequence would have a disproportionate impact on small and medium-sized businesses. Although there has been a general shift from retail to institutional ownership of public companies in the past few decades, thousands of the approximately 12,000 public companies in the U.S. do not have majority institutional ownership and continue to rely on brokers voting uninstructed proxies to obtain the quorum required under state law.

The proposal would further diminish the voice of retail shareholders in favor of activist investors and unregulated proxy advisory services

Investor activism by special interest groups has increased dramatically in the last few years. Unfortunately, the proposed amendment would shift voting power to special interest groups who use minority stock positions to pursue non-investment objectives. Often these objectives can be in direct conflict with investor interests in building long-term corporate value in the companies in which they invest. This proposal would force current retail shareholders who have historically and deliberately relied on their broker to vote in uncontested director elections to either vote the proxies themselves or have their voting power transferred to activist investor groups.

The proxy voting process continues to be guided by dominant proxy advisory services. These firms exercise great discretion and influence over proxy voting without any standardized disclosure of conflicts of interest or business practices. These concepts can be inconsistent with good governance practices at a particular company and with the interests of that company's retail investors. Further diminishment of the retail shareholder voice will strengthen the hand of these firms that influence the proxy process outside of regulatory oversight.

The SEC should increase coordination with the private sector and take a holistic approach to enhancing efficiencies in the proxy voting system

Despite its great potential to create unintended consequences, the current proposal represents only a narrow aspect of the broader proxy voting system. Several specific problems warrant a comprehensive examination of the system, including the lack of retail investor familiarity with the proxy solicitation process or understanding

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of the consequences of the proposed amendment. Any contemplated amendment to Rule 452 must be accompanied by increased efforts to educate investors about the proxy process and improve the ability of issuers to communicate directly with beneficial owners.

For example, improvements to the Notice and Access framework are needed to increase retail investor participation. New technologies and processes can be introduced into the proxy voting system to foster better communications between investors and boards. Alternative voting processes also present opportunities to better balance the diverse voices of the investing community. The Commission should carefully review the experience of brokers who have implemented proportional voting and thoroughly examine the concept of Client Directed Voting.

We urge the SEC to take a holistic view of the broader proxy voting system by considering the unintended consequences of the current proposal along with the potential opportunities to foster better participation from the retail investing community. This broader examination of the entire proxy solicitation process must occur before the approval of any amendment that would eliminate the ability of brokers to vote uninstructed shares in uncontested elections of directors.

Conclusion

It is inappropriate to eliminate the broker vote in director elections without first addressing the lack of investor understanding of the proxy voting process and its adverse effect on retail shareholder participation. We urge the SEC to consider alternative proposals involving technology and processes that have the potential to enhance efficiencies for issuers and produce a balanced voice from the investing community.

As a first step, we urge the Commission to extend the comment period by an additional 90 days as permitted under Section 19(b)(2) of the Exchange Act in order to give interested parties adequate opportunity to comment and to give itself sufficient time to address these important issues in a comprehensive manner. Such a strategy would avoid isolated and incremental changes that would impose broad and unintended consequences on companies that are publicly traded in the U.S.

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Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "David Hirschmann". The signature is written in a cursive style with a large, stylized "D" and "H".

David T. Hirschmann

cc: The Honorable Mary L. Schapiro, Chairman, U.S. Securities and Exchange Commission
The Honorable Kathleen L. Casey, Commissioner, U.S. Securities and Exchange
Commission
The Honorable Elisse B. Walter, Commissioner, U.S. Securities and Exchange
Commission
The Honorable Luis A. Aguilar, Commissioner, U.S. Securities and Exchange
Commission
The Honorable Troy A. Paredes, Commissioner, U.S. Securities and Exchange
Commission