



March 15, 2013

Elizabeth M. Murphy, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.W.
Washington, DC 20549

Re: New York Stock Exchange Proposed Rule – Proxy Distribution Fees

File No. SR-NYSE-2013-07

Dear Ms. Murphy:

In addition to my current role as Executive Director of the Interfaith Center on Corporate Responsibility (ICCR), I spent nearly two decades as an investment advisor to many retail brokerage clients and am a long-time retail shareowner, as well. The organization I represent is the pioneer coalition of active institutional investors who view the management of their investments as catalysts for change. Our 300-plus members represent well over \$100 billion in assets under management.

For 42 years, since the struggle to end apartheid, ICCR's members have been leaders as active investors and continue to file hundreds of shareholder proposals on issues of importance each year. Through thoughtful and well-informed shareholder action, ICCR has created an enduring record of corporate engagement that has demonstrated influence on policies promoting justice and sustainability in corporate operations.

Our concern relates to enhancing opportunities for voices of retail investors and smaller institutional investors to participate in the proxy voting process thus we felt our concerns should be raised in response to the proposed rules regarding fees to be charged to issuers and other parties involved in distributing proxy and other materials to beneficial owners holding securities in street name, which the New York Stock Exchange (NYSE) filed with the Securities and Exchange Commission ("SEC") to amend NYSE rules 451 and 465.

Many of our concerns were thoughtfully and more fully developed in a letter dated March 14, 2013 so I will not reiterate them in this document. Suffice to say as

shareholder proponents we share many of the concerns expressed and are deeply concerned about barriers to active participation by retail investors.

I request the SEC extend the period for comments using your authority under Section 19(b)(2)(A) of the Securities Exchange Act, given the complexity of the issues involved in the proposed rule, and amend the rules to take into account the need for open forms of client directed voting systems.

I am concerned that incentives provided to brokers for developing Enhanced Broker's Internet Platforms (EBIPs) through the proposed regulations do not extend to other more open platforms, such as ProxyDemocracy.org, Sharegate.com or other websites. These and other entities should be afforded at least the same incentives as brokers and, I would argue, much more because of their educational value.

One of the four stated goals of the Exchange's Proxy Fee Advisory Committee (PFAC), according to the Release, is

"To encourage and facilitate active voting participation by retail street name shareholders" which according to data provided each year by Broadridge, Inc. has been in decline for a number of years.

A second goal is

"To ensure the fees are as fair as possible, reflecting to the extent possible both economies of scale in processing, and sensitivity to who (issuer or broker) benefits from the processing being paid for..."

The rulemaking does nothing with regard to the first and completely leaves shareowners out of the equation in the second. I question whether or not actual retail shareowners or groups representing them were consulted by the PFAC.

On its surface, EBIPs offer no real benefit to retail shareowners over e-delivery. It takes more effort to respond to an email by logging into a broker account to vote than it does to simply click on a secure link within the e-mail and vote on ProxyVote.com. The Release describing the rulemaking offers no explanation as to why clients will convert to voting electronically through their broker's EBIP as opposed to through the current system. There is no obvious time or information benefit.

However, one can easily imagine brokers realizing the real deficiency of the current system with regard to retail turnout — the difficulty of voting each company individually for each account and the lack of information or analysis provided to shareowners. Brokers who set up EBIPs might be further incentivized to create default mechanisms that allow votes to be cast in a fashion agreed upon through "client directed voting" where clients can simply click once to have default choices voted, instead of going through each item on the ballot.

This could essentially lead us back to mindless, uninformed voting that improperly tips the scales, of the type we recently got rid of by banning most forms of broker voting.

Background

Historically, most retail shareowners toss their proxies. During the first year under the “notice and access” method for Internet delivery of proxy materials, less than 6% voted. This contrasts with almost all institutional investors voting, since they have a fiduciary duty to do so. “Client directed voting” (CDV), a term coined by Stephen Norman, is seen by many as a solution for getting more retail shareowners to vote, ensuring companies get a quorum, and helping management recapture a good portion of the broker-votes cast in their favor that evaporated with recent reforms.

I strongly oppose the EBIP provisions contained in the current rulemaking because of this likely path. I recommend the rulemaking be delayed and amended to encourage an open form of CDV, which could result in getting out the vote and achieving a quorum through more educated and thoughtful voting.

Retail investors are the principals in the principal-agent system of corporate governance. We are the beneficial owners of all equities – in the U.S., 25 to 30 percent via direct purchases, and 70 to 75 percent via our “ownership” of shares in mutual funds, pension funds and other intermediaries. The agents in our corporate governance system include CEOs, boards of directors, institutional investors, proxy advisory firms, compensation consultants, etc. An “Open Proposal” on CDV will improve the accountability of all these agents to the principals by empowering retail investors with better information and voting tools.

Since Stephen Norman coined the phrase in 2006, the concept of CDV is generally attributed to him and his work with NYSE’s Proxy Working Group. Looking back at the origins of the concept, on October 24, 2006, the NYSE filed a proposed rule change with the SEC to eliminate all broker voting in the election of directors. Two months later in December 2006, Steve Norman presented a proposal called “Client Directed Voting” to an investor communications conference (available at <http://www.governanceprofessionals.org/society/NewsBot.asp?MODE=VIEW&ID=2376&SnID=5> – director).

The case for CDV was again made on the Harvard Law School Forum on Corporate Governance and Financial Regulation by Frank G. Zarb, Jr. and John Endean in their essay, “Restoring Balance in Proxy Voting: The Case for Client Directed Voting” (available at <http://blogs.law.harvard.edu/corpgov/2010/02/14/restoring-balance-in-proxy-voting-the-case-for-client-directed-voting/>). Similar to Norman, the voting options presented were severely restricted to the following: (1) in proportion to other retail shareholders; (2) in a manner consistent with the board’s

recommendation; or (3) in a manner that is contrary to the board's recommendation.

John Wilcox's post several weeks later, "Fixing the Problems with Client Directed Voting" (available at <http://blogs.law.harvard.edu/corpgov/2010/03/05/fixing-the-problems-with-client-directed-voting/>), helped to expand and popularize the concept beyond Norman's initial concept with a more open proposal.

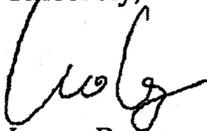
The PFAC and SEC should review the work of Mark Latham, a former member of the SEC's Investor Advisory Committee, who proposed something similar to CDV in the year 2000. See "The Internet Will Drive Corporate Monitoring" and other papers on the VoterMedia.org Publications page at <http://www.votermedia.org/publications>. In stark contrast to Norman's, Latham's proposed system is open and competitive, using a market-driven framework. See also Latham's post, Client Directed Voting Q&A, also found on the VoterMedia.org Publications page at <http://www.votermedia.org/publications>).

Conclusion

NYSE's rulemaking concerning Proxy Distribution Fees attempts only to address the needs of issuers, brokers and large corporate entities. It completely leaves out shareowners. Efforts to facilitate an open CDV system, which improves corporate governance because voting advisors will make it easier for shareowners to meaningfully participate in voting, should be engaged with all deliberate haste.

Open CDV systems enhance voting by allowing shareowners to informally build individualized proxy voting policies, much like formal policies maintained by many institutional investors. Unlike many institutional investors, who may ponder over their voting policies for months, retail shareowners will mostly build default policies based on brand identification. Voting advisors, chosen by shareowners through competitive markets for shared information, will help make agents more accountable and democracy in corporate elections an emerging reality.

Sincerely,



Laura Berry
Executive Director