

U.S. SECURITIES AND EXCHANGE COMMISSION

ROUNDTABLE ON THE PROXY PROCESS

Thursday, November 15, 2018

9:29 a.m.

U.S. Securities and Exchange Commission

100 F Street, N.E.

Washington, D.C.

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1	PARTICIPANTS:
2	
3	COMMISSIONERS:
4	Jay Clayton, Chairman
5	Robert Jackson
6	Hester Peirce
7	Elad Roisman
8	Kara Stein
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10	SEC STAFF:
11	Michelle Anderson
12	Tamara Brightwell
13	Paul Cellupica
14	David Fredrickson
15	William H. Hinman
16	Matt McNair
17	Ted Yu
18	
19	PANELISTS:
20	Jonathan Bailey
21	Ken Bertsch
22	Patti Brammer
23	Ray A. Cameron
24	Ning Chiu
25	John Coates

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2	Dannette Smith
3	Darla Stuckey
4	John Tuttle
5	John A. Zecca
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3	Scot Draeger
4	Sean Egan
5	Michael Garland
6	Maria Ghazal
7	Bruce H. Goldfarb
8	Phil Gramm
9	David A. Katz
10	John Kim
11	Adam Kokas
12	Jonas Kron
13	Rakhi Kumar
14	Alexander Lebow
15	Aeisha Mastagni
16	James McRitchie
17	Sherry Moreland
18	Tom Quaadman
19	Katherine "KT" Rabin
20	Brandon Rees
21	Gary Retelny
22	Edward Rock
23	Robert Schifellite
24	Brian L. Schor
25	Katie Sevcik

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12	Law and Economics, Harvard Law School	
13	Paul Conn, President, Global Capital Markets,	
14	Computershare	
15	Lawrence Conover, Vice President, Operations	
16	and Services Group, Fidelity Investments	
17	Bruce H. Goldfarb, Founder, President and	
18	Chief Executive Officer, Okapi Partners	
19	David A. Katz, Partner, Wachtell, Lipton,	
20	Rosen & Katz	
21	Alexander Lebow, Co-Founder and Chief Legal	
22	Officer, A Say Inc.	
23	Sherry Moreland, President and Chief Operating	
24	Officer, Mediant Communications	
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3 Robert Schifellite, President, Investor

4 Communication Solutions, Broadridge

5 Financial Solutions

6 Brian L. Schorr, Chief Legal Officer and

7 Partner, Trian Fund Management, L.P.

8 Katie Sevcik, Executive Vice President and

9 Chief Operating Officer, EQ

10 Darla Stuckey, President and Chief Executive

11 Officer, Society of Corporate Governance

12 John Tuttle, Chief Operating Officer and

13 Global Head of Listings, NYSE Group

14 John A. Zecca, Senior Vice President, General

15 Counsel North America and Chief Regulatory

16 Officer, NASDAQ

17

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20 Tamara Brightwell, Moderator

21 Matt McNair, Moderator

22 Ray A. Cameron, Head of Investment Stewardship

23 Team for the Americas Region, Blackrock, Inc.

24 Ning Chiu, Counsel, Capital Markets Group,

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4 Paul Cellupica, Moderator

5 Michelle Anderson, Moderator

6 Jonathan Bailey, Managing Director and Head

7 of ESG Investing, Neuberger Berman, LLC

8 Patti Brammer, Corporate Governance Officer,

9 Ohio Public Employees Retirement System

10 Scot Draeger, Vice President, Director of

11 Wealth Management, General Counsel and Chief

12 Compliance Officer, R.M. Davis Private Wealth

13 Management

14 Sean Egan, President and Founding Partner,

15 Egan-Jones Proxy Services

16 Phil Gramm, Visiting Scholar, American

17 Enterprise Institute

18 John Kim, Securities Counsel, General Motors

19 Adam Kokas, Executive Vice President, General

20 Counsel, and Secretary, Atlas Air Worldwide

21 Rakhi Kumar, Senior Managing Director, Head

22 of ESG Investments and Asset Stewardship,

23 State Street Global Advisors

24 Katherine "KT" Rabin, Chief Executive Officer,

25 Glass, Lewis & Co.

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2 Panel two (Continued)

3 Michael Garland, Assistant Comptroller,

4 Corporate Governance and Responsible

5 Investment, Office of the Comptroller,

6 New York City

7 Maria Ghazal, Senior Vice President and

8 Counsel, Business Roundtable

9 Jonas Kron, Senior Vice President and

10 Director of Shareholder Advocacy, Trillium

11 Asset Management

12 Aeisha Mastagni, Portfolio Manager, Corporate

13 Governance Unit, California State Teachers'

14 Retirement System

15 James McRitchie, Publisher, CorpGov.net

16 Tom Quaadman, Executive Vice President,

17 U.S. Chamber of Commerce Center for Capital

18 Markets Competitiveness

19 Brandon Rees, Deputy Director of Corporations

20 and Capital Markets, American Federation of

21 Labor and Congress of Industrial Organizations

22 Dannette Smith, Secretary to the Board of

23 Directors and Senior Deputy General Counsel,

24 UnitedHealth Group

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3 Gary Retelny, President and Chief Executive

4 Officer, Institutional Shareholder Services

5 Inc.

6 Edward Rock, Martin Lipton Professor of Law

7 and Director, Institute for Corporate

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PROCEEDINGS

MR. HINMAN: Good morning. Thank you for joining us, either in person or whether on webcast. We're delighted to have you here and to be hosting this proxy roundtable. I'm Bill Hinman, the Director of the Division of Corporation Finance. We have a full day planned, and I look forward to what I think will be a very robust and helpful discussion for us all.

Before going further, I'd like to note that the views you hear today are those of the SEC Staff, including those of the moderators. And these are our own. They don't necessarily reflect the views of the Commission or other members of the Staff. We will, though, have Staff moderators ask questions that even won't reflect their own views but are designed to elicit spirited dialogue.

A quick overview of the day: Our first panel is on the proxy voting process. It will be moderated by David Fredrickson, the Chief Counsel in the Division of Corporation Finance, and Ted Yu, the Chief of the Division's Office of Mergers and Acquisitions.

We'll break after that panel for lunch around 11:40 and reconvene at 1:15. Panel Two after lunch will be on shareholder proposals. That will be moderated by Tamara Brightwell, our Division's Deputy Chief Counsel, and Matt

McNair, our Special Senior Counsel, who as many of you know has headed our Division's proxy task force for the last few years.

After a short break, Panel Two will resume. At 3:00, for Panel Three, which will focus on proxy advisory firms. That panel will be moderated by Michelle Anderson, an Associate Director in the Division, and Paul Cellupica, Deputy Director of the Division of Investment Management. Michelle, our moderators, and a number of sort of have put a lot of hard work in today's event. I hope you join me in thanking them if you see them throughout the day.

As Chairman Clayton announced in July, we are also seeking written comment on all aspects of the proxy process. Each topic we discuss today could easily be a day-long roundtable all on its own, so we'll benefit greatly from having detailed written comments to supplement and to expand on today's work.

We have a spotlight page on the SEC website dedicated to this roundtable. There's a link there where you can submit those comments. We've already received a number of very helpful comments, and I encourage you to keep that process moving forward.

With that, let me introduce Chairman Clayton to make some opening remarks, after which we'll hear from each of

the Commissioners. And then I'll have some opening remarks, and we'll get underway with the panels. Thank you.

OPENING REMARKS

CHAIRMAN CLAYTON: Thank you, Bill, and good morning, everyone. My fellow Commissioners and I have agreed to keep our remarks brief so we can move forward promptly with this important program. I'm going to highlight four items.

First, a thank you to Bill, Michelle Anderson, and the Staff from the Divisions of Corporation Finance and Investment Management. You are doing what we should do, getting important issues in our markets on the table in a transparent and fair manner. I also want to thank the panelists, who graciously have given their time, given up the time from their busy schedules to be here with us today.

Second, please remember that our capital market system, a system that is built on a combination of state corporate law and federal securities regulation, is one of America's greatest strengths. And its contributions flow far beyond our borders. This is a ubiquitous and unquestionable fact. Perhaps that is why we sometimes fail to remember it.

Third, that system has in large part effectively

addressed the principal agent problems that are inherent in pooling capital. Moreover, we have done so in a way that fosters broad investor participation and nimble flows of capital and labor, relying on the bedrock principles of transparency, materiality, clarity of law, and efficient decision-making. It is these important principal agent and participation issues that we are discussing today. The question on the table is: Can we improve that system?

Fourth, a related question: Who are we improving it for? I believe the answer is our long-term Main Street investors. I hope you will approach these important issues with them in mind, those who are putting or have put 50, 100, \$200 a month away for years and years.

I look forward to a productive discussion. Thank you.

COMMISSIONER STEIN: I want to join the Chairman in saying good morning to everyone and for braving the elements to get here. I also want to thank the Staff for organizing the roundtable, in particular Michelle Anderson, Julie Davis, and the entire SEC team, who worked so hard to bring the roundtable to fruition.

Indeed, it's been eight years since the Commission sought comment on the proxy system. As the Chair mentioned, I think underlying all of our work is the

1 Commission's mission, which is to protect investors,  
 2 maintain fair, orderly, and efficient markets, and  
 3 facilitate capital formation.  
 4 And central to this mission are the laws and rules  
 5 that govern a shareholder's ability to engage with the  
 6 company that he or she owns. The Commission's proxy  
 7 rules allow an investor to actively participate in a  
 8 company's governance structure, and it can afford even a  
 9 single investor a powerful voice. This is not an  
 10 abstract value. Shareholders often fight for corporate  
 11 values that empirically have positive, direct, and long-  
 12 term effects on the corporate bottom line.  
 13 The effects of our proxy rules are not confined to  
 14 just shareholder/company communications. They allow our  
 15 capital markets to continue to be among the most vibrant  
 16 and stable in the world. Unfortunately, our current  
 17 proxy regime is arcane at best. Some of this is due to  
 18 the manner in which proxy materials are distributed and  
 19 votes are processed.  
 20 In addition, the way in which many investors hold  
 21 their shares through broker dealers or other  
 22 intermediaries introduces further complexity into an  
 23 already opaque system. As a result, the proxy system  
 24 does not just involve a company and its shareholders.  
 25 It involves an array of third parties such as broker

1 dealers, banks, custodians, transfer agents, and proxy  
 2 advisors, to name a few. While this tangled web has  
 3 helped to create a plethora of cottage industries, it has  
 4 not necessarily helped to provide transparency to either  
 5 the companies or their investors.  
 6 Today's roundtable will focus on three areas within  
 7 the proxy regime: proxy voting mechanics and technology,  
 8 shareholder proposals, and proxy advisors. Each of these  
 9 areas is a spoke in the overall proxy wheel. They form a  
 10 framework through which shareholders ultimately  
 11 communicate with the companies they own.  
 12 As far as this morning's first panel is concerned,  
 13 I'm interested in hearing how technology can help proxy  
 14 mechanics. For example, should companies be able to use  
 15 distributed ledger technology or blockchain technology to  
 16 identify and reach their shareholder bases more  
 17 efficiently? Would standing voting instructions allow  
 18 companies to hear from their retail investors more  
 19 effectively?  
 20 With respect to shareholder proposals, I would like  
 21 to hear about the broad shareholder proposal process, and  
 22 in particular, the numerous pieces of guidance that the  
 23 SEC Staff have issued over the years, from no action  
 24 letters to Staff legal bulletins. Has the Staff guidance  
 25 remained true to the Commission's rules? Or is the

1 guidance having the effect of silencing proposals that  
 2 could enhance company value?  
 3 Finally, with respect to proxy advisors, I'd like to  
 4 better understand the role of a proxy advisor in the  
 5 overall proxy architecture. Just yesterday a bipartisan  
 6 bill was introduced in the Senate that would require the  
 7 Commission to regulate proxy advisors under the  
 8 Investment Advisors Act.  
 9 As one Senator noted, millions of hardworking  
 10 Americans rely on the guidance provided by proxy advisors  
 11 for safeguarding their retirement savings. Should proxy  
 12 advisors be regulated, and if so, how? How would this  
 13 help or harm investors of all sizes?  
 14 So hopefully today's roundtable will be a new start  
 15 to a longstanding conversation. Thank you, And I look  
 16 forward to today's discussion.  
 17 COMMISSIONER JACKSON: Well, thank you, Mr.  
 18 Chairman. I want to begin by congratulating Director  
 19 Hinman and you, Mr. Chairman, on the extraordinary  
 20 leadership necessary to convene this important  
 21 conversation. And I just want to make two points.  
 22 First of all, my experience in this first nine or  
 23 ten months on the job working with Director Hinman and  
 24 his staff has taught me a great deal about all of the  
 25 issues we're going to discuss today. And one of the

1 things I've learned is that the Corp Fin Staff has been  
 2 thinking about these issues for years.  
 3 In fact, one of the panels will be moderated today  
 4 by David Fredrickson, a tremendous staffer in Corp Fin.  
 5 David, among other things, is a fan of the Oakland As.  
 6 (Laughter.)  
 7 COMMISSIONER JACKSON: And this requires two things  
 8 that I think are relevant to keep in mind today. First,  
 9 hope can triumph over experience. And second, the arc of  
 10 history is long but it bends toward justice.  
 11 (Laughter.)  
 12 COMMISSIONER JACKSON: And that's why it's so  
 13 important that we've having this conversation today.  
 14 First, I have said, as I mentioned before, there's broad  
 15 agreement, folks, that the way investors' votes are being  
 16 counted in America needs to be fixed.  
 17 And that's why I'm so pleased that the first panel  
 18 will be discussing that issue. Every one of the  
 19 participants here today, as the Chairman pointed out, is  
 20 extremely thoughtful, took time from their busy schedule  
 21 to be here. And I'm grateful.  
 22 Finally, the third panel today is going to discuss  
 23 the role of proxy advisory firms. And there have been a  
 24 number of recent proposals that make clear that there is  
 25 a bipartisan and clear path forward to address the issues

1 raised in that area.

2 This suggests to me that today's conversation is an  
3 important start down the road of getting things done in  
4 this area. I'm delighted to be here. I congratulate the  
5 Chairman and Director Hinman on the leadership necessary  
6 to bring this conversation together, and I look forward  
7 to the debate.

8 COMMISSIONER PEIRCE: Thank you all for being here  
9 today. Thank you to all the panelists for making the  
10 trip to be here and taking the time. And I also want to  
11 thank the people who have written letters in. There are  
12 already a number of letters in the file and those are  
13 very useful, and we look forward to others as well.

14 I want to thank Bill and the Staff for putting  
15 together a roundtable, which takes a lot of work. We  
16 know that, so we're grateful for the effort that you've  
17 put in. And also, Chair Clayton, thank you for your work  
18 and your leadership in making this issue one that we're  
19 looking at today.

20 As Chairman Clayton mentioned, principal agent  
21 problems run through the discussion that we're going to  
22 have today. And I look forward to hearing your thoughts  
23 on how we can manage the conflicts that come out of that.

24 Obviously, the whole point of the proxy process is to  
25 give shareholders the opportunity to weigh in on how

1 their companies are -- how their agents are working in  
2 their behalf.

3 But we also have another principal agent problem,  
4 which is that funds, many shareholders are funds, and the  
5 people managing those funds also are agents of the funds.  
6 And sometimes they're acting in ways that look more  
7 consistent with their own preferences and perhaps not  
8 those of the fund. So I think that's another area that  
9 we'll consider today.

10 And then we have a manufactured principal agent  
11 problem, which is that sometimes we allow one or a small  
12 number of shareholders to act as an agent on behalf of  
13 other shareholders. And I think we need to examine  
14 whether that is the right thing to do and whether there  
15 are protections that we can put in place to make sure  
16 that the idiosyncratic preferences of one shareholder  
17 aren't driving what companies do at the expense of other  
18 shareholders.

19 So I look forward to hearing the discussion today.  
20 And thank you again for your willingness to be here.

21 COMMISSIONER ROISMAN: Good morning. I want to echo  
22 what all the Commissioners have said in welcoming  
23 everyone. And thank you for your time and insights. And  
24 thank the Divisions of Corporation Finance and Investment  
25 Management for your work on this roundtable.

1 I hope that everyone will take this opportunity to  
2 engage in a thoughtful, meaningful discussion on the  
3 proxy process. If the process were perfect, we wouldn't  
4 be here today. People tend to get really passionate  
5 about these topics, and trust me, we know where most of  
6 you, if not all of you, are on them. So you have a  
7 platform today, and I hope you use it to provide us with  
8 specific examples, data, and facts rather than  
9 generalities or anecdotes.

10 With the knowledge you gather today, you can then  
11 submit data to the comment file based on these  
12 discussions. We look forward to these submissions and your  
13 recommendations on how the SEC can make changes to  
14 improve the process.

15 I'll be posting a longer statement to the SEC  
16 website with lots of questions that I think are important  
17 and relevant, and I'll look forward to further engagement  
18 on all those topics. But again, thank you very much, and  
19 I look forward to today's discussions.

20 MR. HINMAN: Well, thank you, Chairman Clayton and  
21 Commissioners. Let me just add a couple of things.

22 For each panel, we've tried to bring together a  
23 balanced assortment of balanced and experienced  
24 viewpoints. The topics we will discuss are familiar  
25 ones, and the panels assembled today have been

1 thoughtfully considering these issues for some time.

2 As regulators, we are continually seeking to enhance  
3 our rules. But in many instances, we find that the  
4 private market solutions can be faster, more flexible,  
5 and less intrusive. And when a regulatory change is  
6 needed, we at the SEC benefit greatly from those who have  
7 engaged with one another, seeking feedback from one  
8 another and seeking consensus to the issues at hand.

9 The discussions today and the comments we will  
10 receive will help us develop recommendations for change.  
11 I would encourage all the stakeholders to continue to  
12 work together and to find market-driven solutions. But  
13 we also need your thoughts when a regulatory answer is  
14 needed.

15 The proxy voting process, as folks have pointed out,  
16 is our first panel. Obtaining a shareholder vote is  
17 simple in concept, but as our panelists and all the  
18 audience here know, it's complex in execution. Issuers,  
19 brokers, banks, proxy service providers, transfer agents,  
20 tabulators, many others, all have to work together in a  
21 carefully choreographed process to enable a vote to be  
22 cast by a shareholder, and importantly, for that vote to  
23 be accurately counted.

24 While the process works well for the majority of  
25 public company meetings, legitimate concerns exist about

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1 the accuracy, transparency, and efficiency of our voting  
 2 processes.

3 The Commission raised these issues in the 2010  
 4 Concept Release, and some of the complicated questions  
 5 that that Concept Release covered still present  
 6 challenges. Overvoting/undervoting of securities  
 7 continued to be a concern.

8 Many say the confirmation of whether investors'  
 9 shares are accurately voted in accordance with their  
 10 wishes continues to be more difficult than it need be.

11 And we continue to hear concerns about the costs and  
 12 challenges of distributing proxy and other materials to  
 13 beneficial owners who hold in street name and challenges  
 14 communicating with those shareholders.

15 We've also seen some real-life examples where the  
 16 proxy process did not work as well as we would hope,  
 17 particularly in some contests. Getting to accurate  
 18 results has sometimes been slow, costly, and cumbersome.

19 Yet there are reasons to be optimistic about finding  
 20 solutions. New ideas like blockchain technology are  
 21 increasingly being embraced by participants in the  
 22 financial system, from NASDAQ to Broadridge, DTC, and  
 23 Wall Street. The Main Street investor has a strong  
 24 interest as well.

25 Recently one of our registered companies completed

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1 its first use of blockchain technology for voting at an  
 2 annual general meeting. We're interested in hearing the  
 3 panelists discuss how innovation and technology can  
 4 present a path forward to modernizing and improving the  
 5 integrity and the effectiveness of our proxy  
 6 infrastructure.

7 Shareholder proposals will be the focus of our  
 8 second panel. Engagement between companies and their  
 9 shareholders has increased in recent years. The  
 10 shareholder proposal process under our rules, though  
 11 frequently and often discussed, is just one avenue for  
 12 that engagement.

13 Today shareholders can engage with their companies  
 14 and with other shareholders through a variety of means,  
 15 including social media. This can provide a more  
 16 instantaneous and wider platform upon which to engage and  
 17 get a message out. The Commission's shareholder proposal  
 18 rules predate these developments and engagement. And we  
 19 should explore what the implications of that are for the  
 20 process.

21 For example, in light of today's communication  
 22 tools, does a non-majority vote that exceeds our current  
 23 resubmission threshold mean the same thing as it did five  
 24 or ten years ago? I know the panelists joining us today,  
 25 as well as many others, have given careful thought to how

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1 our rules work now and whether changes are needed in  
 2 light of developments in communication and business  
 3 practices.

4 I expect today's dialogue will include discussion of  
 5 SEC Staff guidance in the shareholder proposal area. We  
 6 welcome that. We, as you know, assist both management  
 7 and proponents each year. The Staff puts together a  
 8 proxy team that looks at whether a particular proposal  
 9 can be excluded from the company's proxy material.

10 While our responses reflect only the Staff's  
 11 informal views that are not binding on the Commission or  
 12 a court, we take our role in that process very seriously.

13 And we encourage your commentary on our process and how  
 14 we're doing.

15 As we discuss shareholder proposals, it's probably  
 16 quite appropriate to pay some tribute to Evelyn Y. Davis.

17 She passed away this month at age 89. Evelyn was a  
 18 well-known and colorful shareholder proponent. As you  
 19 know, she attended shareholder meetings religiously for  
 20 decades, championing proposals, asking a lot of tough  
 21 questions, all at a time when it took courage and  
 22 fortitude to do so. Of course, as a Holocaust survivor,  
 23 Evelyn had plenty of those characteristics.

24 Our third panel will talk about proxy advisory  
 25 firms, and that will close out the day. Both the

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1 Divisions of Corporation Finance and Investment  
 2 Management have a strong interest in hearing more in this  
 3 area.

4 We've heard the concerns from issuers and their  
 5 representatives relating to process, such as whether  
 6 issuers are given adequate opportunity to respond to  
 7 adverse recommendations. And we've heard concerns as to  
 8 substance -- for example, issuers have asserted that the  
 9 recommendations of firms can too often be premised on  
 10 factual errors or misunderstandings.

11 There are also frequent calls for more efficacy and care  
 12 regarding the recommendation process and potential  
 13 conflicts of interest. At the same time, we know that  
 14 many institutional investors find great value in the  
 15 proxy advisory firms' recommendations as they consider  
 16 their voting decisions on so many matters presented at so  
 17 many portfolio company meetings.

18 We hope this panel will have a constructive dialogue  
 19 on these concerns and help us set a thoughtful course  
 20 forward. It will be particularly interesting to hear  
 21 what the panelists think of the legislation Commissioner  
 22 Stein mentioned, introduced just yesterday by six  
 23 Senators, three Republicans and three Democrats. As she  
 24 mentioned, this bipartisan effort would also require,  
 25 among other things, that proxy advisory firms register

1 under the Investment Advisory Act.  
 2 Again, I encourage everyone to keep what we hope  
 3 will be a very productive process going through  
 4 submission of comment letters, even after today's event  
 5 is over. We greatly appreciate your engagement.  
 6 With that, let me turn it over to David Fredrickson  
 7 and Ted Yu, who will lead our first panel. Thank you.  
 8 PANEL ONE -  
 9 PROXY VOTING MECHANICS AND TECHNOLOGY  
 10 MR. YU: Good morning. I'd like to welcome all the  
 11 panelists and the Commissioners and everybody in the  
 12 audience, as well as watching on the webcast, to the  
 13 first panel of the day. We have a very ambitious agenda  
 14 for today and a very impressive set of panelists. So  
 15 we'll keep the introductions brief, but you can certainly  
 16 go to our website, where the full biographies are  
 17 available.  
 18 So let me start with Ken Bertsch on my left from the  
 19 Council of Institutional Investors; Professor John Coates  
 20 from Harvard Law School; Paul Conn from Computershare;  
 21 Lawrence Conover from Fidelity; Bruce Goldfarb from Okapi  
 22 Partners; David Katz from Wachtell Lipton; Alex Lebow  
 23 from A Say; Sherry Moreland from Mediant Communications;  
 24 Bob Schifellite from Broadridge; Brian Schorr from Trian  
 25 Investment; Katie Sevcik from EQ; Darla Stuckey from the

1 Society of Corporate Governance; John Tuttle from NYSE;  
 2 and last but not least, John Zecca from NASDAQ.  
 3 So we would like to start off with a couple of  
 4 housekeeping matters. One, as you speak, please press  
 5 the button the mikes. There will be a big red light.  
 6 And when you are done, please turn it off so that we  
 7 don't have technical problems. And also, I expect that  
 8 we'll have a very lively discussion with back and forth.  
 9 So to the extent you want to respond to comments, please  
 10 put your card on the side if we don't see you and  
 11 recognize you.  
 12 So with that, I think a good way of sort of teeing  
 13 up the issue is to mention that the SEC's Investor  
 14 Advisory Committee recently held a meeting on the proxy  
 15 infrastructure. Professor John Coates, as a member of  
 16 the committee, was in attendance. And we would like to  
 17 start off the conversation with a summary of what was  
 18 discussed.  
 19 PROFESSOR COATES: Great. Thank you, Ted, and  
 20 thanks to the Commission for having this event. And  
 21 thanks for inviting me, on behalf of the IAC, to  
 22 summarize some of what we heard.  
 23 Some of the members of the panel that we had are  
 24 here, so I'm probably going to try to stay away from what  
 25 I'm anticipating they may or may not have an opportunity

1 to say today, but summarize some of the other themes that  
 2 we heard.  
 3 I should emphasize this is my take on what we heard,  
 4 and the IAC as a whole hasn't really deliberated on these  
 5 issues yet, but we probably will. And so that's another  
 6 reason why I'm delighted to be here today, to take in the  
 7 further views of the panel, which is quite impressive.  
 8 So let me echo a couple of the remarks from Bill  
 9 Hinman and the Commissioners. This topic, the one for  
 10 the morning panel, I think is the most boring of the  
 11 three.  
 12 (Laughter.)  
 13 PROFESSOR COATES: The least partisan. And  
 14 honestly, the most important, from my perspective and  
 15 from, I think, the perspective of the panelists that we  
 16 heard at the IAC. There's room for improvement; no one,  
 17 I think, has ever said publicly that they would create  
 18 the system that we have today if they were doing it from  
 19 scratch.  
 20 It's one that's accreted over time, and virtually  
 21 everyone agrees that there are some significant ways in  
 22 which it can be improved. The difficulty is one of  
 23 willpower, frankly -- do we have the willpower to improve  
 24 the system, recognizing, and let me just acknowledge, the  
 25 interests, legitimate interests, of a variety of private

1 actors who are already actively working in this system to  
 2 make sure that their interests are appropriately  
 3 reflected in any changes? Having said that, I still  
 4 think that there are ways that we can make improvement  
 5 despite the risk that some people may resist change, for  
 6 private reasons.  
 7 The main topics that I think we heard, themes, at  
 8 our panels that could lend themselves to regulatory  
 9 adjustments or industry-driven change in cooperation with  
 10 SEC flexibility -- because of course regulation works in  
 11 both an affirmative sense and also a restraining sense.  
 12 I think Commissioner Peirce often makes that point, and I  
 13 think it's a fair one.  
 14 And I think there were some aspects of the system  
 15 where regulatory change is needed, not because of the  
 16 desire to impose new regulatory burdens, but rather to  
 17 create space for change.  
 18 So the themes are, roughly speaking, these. First,  
 19 I think there's a general concern that retail  
 20 participation is down. Retail investor ownership is  
 21 down. But even within that space, participation in the  
 22 voting system is down, difficult to achieve, even in  
 23 settings where the vote really will potentially have a  
 24 pivotal role in proxy fights.  
 25 One reason for that, not the only reason but one

1 reason, is that the OBO/NOBO system creates difficulties  
2 in in communication with retail that's maybe more acute  
3 than communication with institutional. And there, there  
4 is a system of rules that create the faults for the  
5 selection that could be revisited, I think appropriately  
6 so.

7 Connected to that, I would suggest, the SEC could  
8 play a role here in just trying to verify through a  
9 survey of some sort why people who do not choose to be  
10 NOBOs don't do so. Are they confused, possibly, about  
11 the difference between anonymity as an investor, which  
12 they might want for other reasons, and anonymity within  
13 the voting system, which actually doesn't exist even if  
14 they don't know it, but it only exists up to a certain  
15 point in the process.

16 Are there other ways to address legitimate reasons  
17 they might have for choosing to not be NOBOs? And could  
18 the industry respond to more flexibility on that? One of  
19 those points nudges, for example, towards creating more  
20 non-objecting owners. So that's one.

21 A second one would be see-through voting. Investors  
22 would like the ability to know whether their votes have  
23 been counted. We see this in Florida at the moment and  
24 Georgia, but it's equally true in the corporate setting,  
25 if not more so, because of the many layers of

1 intermediation making it actually harder in a practical  
2 sense to verify votes, or voting instructions, accurately  
3 be carried out.

4 There, retail can make mistakes, which are innocent  
5 and could be fixed. And institutional owners can  
6 inadvertently end up with problems due to share lending  
7 and other kinds of intermediary information flows that  
8 they don't have in easy access currently to fix.

9 There are solutions that exist. I would think that  
10 Broadridge could to think hard about how to make their  
11 approaches simpler. And for the other participants in  
12 the system to ask hard questions about whether they're in  
13 fact more of a problem than a solution at the moment.

14 Third, and then I'll have a fourth and I'll subside  
15 -- third theme would be around, in fact, the many layers  
16 of intermediation, producing mismatches in information  
17 which can lead to disqualification of votes. I think  
18 it's a common theme that, between custodians, transfer  
19 agents, sub-custodian/sub-custodian, sub-custodian often  
20 three layers.

21 There's ample room for mismatch in information in  
22 the underlying records to create problems when we get to  
23 a contested vote. That could be fixed outside the  
24 context of a high-profile proxy fight. That could be  
25 fixed on an ongoing and regular basis if there was an

1 ever-so-slight nudge or set of incentives one way or the  
2 other for the participants in that system to take thought  
3 task more seriously than they have up till now.

4 Finally, universal proxy, which has been around for  
5 a while. And the IAC put out a recommendation on it  
6 several years ago; and frankly, we having done that and  
7 not having had it taken up, didn't think this was likely  
8 to come back.

9 But in fact, at the panels we heard more positivity  
10 about that concept from an array of speakers, including  
11 speakers who, in the past, have resisted it. I think  
12 people have thought it through in a more careful way  
13 today, and I again recommend that the Commission think  
14 about that going forward.

15 So with that, I will subside. Thank you.

16 MR. YU: Thank you very much. That was a perfect  
17 start to the first question of the day, which we're going  
18 to focus on accuracy in the voting process. Recently the  
19 Securities Transfer Association estimated that out of  
20 approximately 183 meetings that its members tabulated  
21 this past year, about 130 or so had suspected overvoting.  
22 Obviously, most of them were reconciled, but it does  
23 continue to raise questions about why these problems  
24 continue to pop up.

25 We thought maybe we could start with Katie and Ken,

1 with their view on sort of the causes of overvoting and  
2 undervoting and voting inaccuracy problems, whether it's  
3 sort of more common on the street side versus the  
4 register side in terms of ownership; and sort of what  
5 steps can we take to address this first problem?

6 MS. SEVCIK: Thank you, Ted. I'll go ahead and  
7 start. I actually have had the opportunity in my career  
8 to have managed the proxy process from both the DTC  
9 participant side as well as the transfer agent side,  
10 tabulator.

11 And so for me, the first time I thought I realized  
12 that something was happening with the system was when I  
13 was on the side of the DTC participant. So I had income  
14 collections, corporate actions, mutual funds, and proxy.

15 And the manager of the proxy area came to me and said,  
16 "Oh, we just overvoted. I don't know what to do."

17 And I thought, wow. How does this happen? Again,  
18 you're thinking of income collections, corporate actions,  
19 how you balance, how this happened. And it turned out to  
20 be it was the suspense account. There was a trade that  
21 happened. The trade settled fine on the marketplace.  
22 But the system suspended out.

23 Unfortunately, the information on record date, the  
24 information was sent to the intermediary. And so the  
25 information then was sent out to the beneficial

1 shareholder. When I called the intermediary to say, "We  
 2 had an overvote. How do we correct it?" The response  
 3 was, "It's a fungible mass. It's at DTC. Don't worry  
 4 about it."  
 5 So as I pushed more and more and more, I was able to  
 6 get the name of the tabulator, contacted the tabulator,  
 7 and the exact same response was, "It's a fungible mass.  
 8 Don't worry about it. It's all in CD and code. Not  
 9 everybody votes." So obviously, for me it was, "No, I  
 10 want this corrected. Correct it."  
 11 Then I moved ahead again to the transfer agent side.  
 12 And remembering what I had seen on the DTC participant,  
 13 I asked the team, my proxy group, "Do you ever see any  
 14 overvoting situations?" Again, I was surprised that  
 15 before, it just didn't seem to make a difference.  
 16 I said, "Do you see this?" And what they did is  
 17 they provided me, so some specific examples -- what they  
 18 did was they provided me with one particular meeting and  
 19 with detail of the top ten broker overvotes. And every  
 20 single one of them were in the millions of shares of  
 21 overvoting for this particular meeting.  
 22 So contracting the corporate secretary of that  
 23 company, the corporate secretary had urged us to go to  
 24 the NYSC -- at the time, the NYSC was the regulatory body  
 25 -- and present some of the findings. At that point in

1 time, the NYSC did actually do some investigation, and  
 2 you can go back and look at that to see what happened.  
 3 But a lot of those were dealt with. These larger  
 4 ones were really more for the securities lending, where  
 5 the shares were out on loan and yet the information that  
 6 went to the intermediary included -- the investor that  
 7 had loaned it out included it as a long position for  
 8 them. So I think at that point in time, again, a lot  
 9 more focus, thankfully. I mean, a lot of focus by the  
 10 brokerage community and the bank custodian community to  
 11 look at it.  
 12 And fast forward a number of years after that. A  
 13 more recent example was the team came in and said -- and  
 14 this is maybe two hours or so before the polls closed -- and  
 15 said, "We have a huge overvote for one particular DTC  
 16 participant." And I don't remember, but it was something  
 17 like 250 million or 350 million. And at that point,  
 18 contacted the intermediary to say, "I need to get  
 19 involved. Please give me the name of the contact at the  
 20 broker."  
 21 And in dealing with questions about what exactly  
 22 happened, the first thing they said was, "Well, we're not  
 23 in an overvote situation." And I said, "Well, here's  
 24 your DTC position. It's X, and you voted Y." And he  
 25 said, "No, no. I'm just -- I'm looking at it. It's

1 fine." And I said, "What are you looking at?"  
 2 "Well, we're looking at the overvote system. They  
 3 had signed up for the overvote. And in asking further  
 4 questions, found out that they had taken the DTC position  
 5 and then added to it what they thought were shares that  
 6 they could vote. And it turned out, this case, it was a  
 7 certificate located in their vault, and they actually  
 8 were voting the certificated registered person through the  
 9 intermediary.  
 10 When we found out how it was registered -- it was  
 11 not in firm name; it was actually registered an investor  
 12 -- went and found out that they already had voted their  
 13 registered shares. And so then the matter was, which  
 14 votes do I take out? Was the last vote that you sent in  
 15 that caused you to go over, was that the vote for this  
 16 individual? Or was it the earlier vote that you sent in,  
 17 and having to reconcile those positions?  
 18 On the registered side, the registered side aspect  
 19 on it, the tabulator transfer agent does have to give a  
 20 registered, certified list to the issuer as to all or  
 21 those shareholders at the date of that record date for  
 22 that meeting. So on the registered side, you do have the  
 23 full detail on who is eligible to vote as of that date,  
 24 and being able to send out the material.  
 25 MR. FREDRICKSON: Thanks, Katie. And I think that

1 illustrates pretty well that there are continuing  
 2 problems that relate to the complexity of the system and  
 3 to the basis, the fundamental basis, on which we're  
 4 operating. There has been very good work by various  
 5 parties to try to be more true to the actual vote  
 6 intention of beneficial owners over the years, but I  
 7 think it's a patched-together system to some extent.  
 8 So our view at this point is that it is time for a  
 9 fundamental rethink. In terms of bill regulation versus  
 10 market forces, we think that there has to be at least a  
 11 thought process led by the SEC to really work through  
 12 what makes sense.  
 13 So to back up a little bit, number one, thank you.  
 14 Thanks, Ted and David and Michelle, for your great work,  
 15 great questions. I was telling people the kind of scary  
 16 questions that they provided this panel, and I assume the  
 17 others as well -- although this one has some technical  
 18 aspects that get very difficult.  
 19 But our view is that there needs to be real  
 20 consideration of fundamental change right now, partly  
 21 because technology is clearly available that could be  
 22 very appropriate for this area. But we also need to look  
 23 at some short-term fixes.  
 24 A fundamental rethink is going to take time, if we  
 25 do have the will to do it. And there are some things we

1 can fix in the meantime. I'm not sure that nudges alone  
 2 are really going to get us to where we need to go, but  
 3 they could help in the short term.  
 4 So the SDA statement is disturbing. We believe that  
 5 the most important reasons for inaccuracies are  
 6 fundamental, the current system of share immobilization  
 7 with a fungible share mass, which Katie referred to, with  
 8 no traceable link to a specific holder.  
 9 Clearly there are a number of factors within that;  
 10 share lending's probably the most important in terms of  
 11 causing a lot of the noise. I pick up that there's a  
 12 continuing view on the broker bank community that these  
 13 are their votes, the way it's talked about, like, "If we  
 14 overvoted the position," whereas our members feels the  
 15 vote belongs to them as beneficial owner.  
 16 And in effect, I think it has to belong to the  
 17 beneficial owner or the incentives are all wrong. The  
 18 brokers and banks actually don't have an interest in  
 19 making this work right. So time to tackle fundamental  
 20 reform. I think we may come back around to that with  
 21 some blockchain questions.  
 22 Within the context of the current system, we can  
 23 improve with some near-term steps that we believe the SEC  
 24 does need to take steps to make happen. One is routine  
 25 and reliable vote confirmation. That's the most

1 important part for the institutional investor community.  
 2 Second, guidance that leads to pre-reconciliation of  
 3 discrepancies between broker dealer and DTC positions to  
 4 minimize the differences. And third, which is slightly  
 5 off of this question, universal proxy -- but I'm glad  
 6 John addressed that -- which we think is a very  
 7 straightforward way to improve another aspect of this.  
 8 Any solution should recognize the principle that  
 9 beneficial owners, not intermediaries, are the  
 10 shareholders whose voting intent is critical to the  
 11 legitimacy of the systems.  
 12 Even as instances of overvoting have decreased, some  
 13 broker dealers still cap their beneficial owners'  
 14 aggregate shares to match DTC records. So we hear  
 15 continuing issues. And share voting becomes disconnected  
 16 from share ownership.  
 17 An automatic system of vote confirmation ideally  
 18 would be instantaneous. But at least prior to vote  
 19 deadlines, the investors should see exactly how many  
 20 shares were voted that they beneficially own and which  
 21 way they were voted.  
 22 As a short-term fix to this problem, we believe the  
 23 SEC should, through guidance or rulemaking, require all  
 24 intermediaries to cooperate and transmit the necessary  
 25 information to enable vote confirmation. Broadridge and

1 tabulators have worked on a protocol.  
 2 It hasn't actually been put in place in practice  
 3 other than on an experimental basis. Bob and others may  
 4 speak to it later, but I'm not sure it's sufficient, but  
 5 it would be helpful if that's enabled. And I don't think  
 6 that's going to happen without the leadership of the  
 7 Commission.  
 8 So I'll leave it there for now.  
 9 MR. YU: Well, vote confirmation's actually an  
 10 excellent area where perhaps we could explore a little  
 11 bit in terms of what the problem is, but also what  
 12 confirmation is one where I think, as you mentioned,  
 13 there were some private market attempts to deal with  
 14 this. I know Bob, Broadridge had worked with a group of  
 15 folks back in '12, to do a roundtable and also to work  
 16 out some protocols.  
 17 Perhaps you can start with just sort of the basic  
 18 question. Is vote confirmation possible today? And if  
 19 not, what are the problems? And perhaps maybe even share  
 20 some of your experience from the private sector attempts  
 21 to deal with this.  
 22 MR. SCHIFELLITE: Sure. Thank you, Ted, and thank  
 23 you to the Commission and the Staff for putting this  
 24 together. And thank you for allowing us to participate.  
 25 I do want to share as much as possible of other

1 people's comments, not just Broadridge comments, that  
 2 have been stated because I think it'll be looked at maybe  
 3 a little bit more objectively. And I know that's  
 4 important; it was stated by the Commissioner.  
 5 First I would say, just in a couple of comments, the  
 6 overreporting process, we've come a long way. All right?  
 7 So several years ago, when this really was an issue, we  
 8 had, Broadridge had, an overvoting service that not many  
 9 is used.  
 10 Today most use -- not all -- but most use. And with  
 11 that process, right after record date, one can determine  
 12 the number of shares and whether they're in an overvote  
 13 or not situation. Very, very helpful. That's what's  
 14 caused the dramatic improvement. We want to get  
 15 everybody onto that process. It's a free service.  
 16 There's no charge for that service.  
 17 But to the point Ken made, if we can reconcile --  
 18 and you can, the capability exists today -- to reconcile  
 19 right after record date, that gives tabulators,  
 20 inspectors, 35, 40 days on average to be able to decipher  
 21 if there's an issue that needs to get resolved. And it  
 22 will and can get resolved.  
 23 To your question of vote confirmation, there's been  
 24 so much work, and I think we're all in violent agreement  
 25 that we should have vote confirmations because that would

1 eliminate a lot of the noise, a lot of the concerns, and  
2 make more investors feel very comfortable about the  
3 process and its reliability.

4 So I have a document here -- I have lots of stuff  
5 here, audits, props; that's why my back hurts a lot --  
6 but we have a document here, and the transfer agents and  
7 Broadridge worked together I thought extraordinarily well  
8 to attack this problem.

9 And the conclusion was over two years -- and this  
10 goes back to 2015/2016 -- that we did I think it was 25  
11 or so meetings where we did a pilot where we did end-to-  
12 end confirmation. This paper, which I will submit  
13 subsequent to this meeting, says as follows, and the  
14 author -- the co-chairs were Mario Passudetti, who at the  
15 time was Bank of New York Mellon, and Maryellen Andersen  
16 from Broadridge.

17 It says, "The Securities Industry End-to-End Vote  
18 Confirmation Steering Committee has concluded that the  
19 projects and pilots in which it has been engaged have  
20 demonstrated the viability of vote confirmation." So  
21 we've done it. We've proven that it works. Right?

22 And this is a committee of lots of participants. It  
23 included brokers, issuers, transfer agents, Broadridge.  
24 It works. I think we've been at this for years. We,  
25 Broadridge, confirm when we are the tabulator. But this

1 is documented, and there were things that we had to do  
2 and others had to do to make the confirmation process as  
3 effective as it could be.

4 We can't get participation. I do agree with Ken we  
5 need leadership from the Commission to give more  
6 guidance. Maybe it's rule. I know we tried to do this  
7 without regulatory rule. But if people are still  
8 concerned about this process and the accuracy, I think we  
9 have to do something to ensure that there is a vote  
10 confirmation process.

11 And again, I am going to submit these. I'll give  
12 you one other example. The so-called omnibus  
13 confirmation process, we all know that's complicated.  
14 It's difficult. We all know that. Several years ago, in  
15 anticipation of doing this pilot, there were still paper  
16 omnibus reports that were being issued.

17 The committee said, "Broadridge, everything has to  
18 be electronic." We agree. So this is like 2012. It is  
19 now all electronic. Every tabulator has access and can  
20 get it. Often, not everyone will take it nicely. We  
21 have to make sure we take advantage of technology. I'll  
22 conclude there for now.

23 PROFESSOR COATES: Can I just ask a real quick  
24 clarification? Real quick. When you say we can't get  
25 participation, can you just be painfully specific, even

1 at the risk of offending somebody on the panel? Because  
2 I don't quite know what you mean.

3 MR. SCHIFELLITE: Yes. I would say that, in  
4 particular, the tabulators have resisted participating in  
5 the confirmation process. It is pretty straightforward.

6 It is not complicated. It should not be costly to be  
7 able to do this. We've done it. We've done it with  
8 issuers directly. We continue to do it where we can.

9 I don't know, but that's where we think the problem  
10 is. I've talked to Ken about it. I said, "Ken, if we  
11 really need this, somebody has to push to make it happen.  
12 We are ready. We are in violent agreement that this has  
13 to happen."

14 MR. YU: So I see a lot of movement.

15 (Laughter.)

16 MR. YU: So let me line it up this way. Paul, would  
17 you like to go first? Then followed by Darla, and then  
18 Katie.

19 MR. CONN: Sure. Firstly, thank you to the  
20 Commission and the Staff for inviting Computershare and  
21 myself as a representative of the company. I just want  
22 to be very clear, I'm not representing the Securities  
23 Transfer Association today. I'm here in my personal  
24 capacity as an executive of a company.

25 You asked for a spirited debate. I think that

1 probably is going to kick things off. Look, in terms of  
2 vote confirmation, we as a major transfer agent in this  
3 country, and the largest in the world, are in violent  
4 agreement. Okay?

5 So votes that come in electronically should be  
6 should be confirmed electronically. There's really two  
7 points. The first is: What does confirmation actually  
8 mean? Does it mean the vote has been received? Does it  
9 mean the vote carried into the meeting? Is it given on a  
10 post-meeting basis?

11 If the omnibus account balance changes between when  
12 the vote is received and the meeting occurs, who is  
13 responsible for reporting that? So there's some kind of  
14 general issues. Everyone talks about vote confirmation  
15 as being a very simple thing. We all agree. It should  
16 be part of our system.

17 I think there is one fundamental point that Bob just  
18 raised, and he emphasized the point: reconciled  
19 positions. Now, we've been talking about some of these  
20 things for almost 20 years. Right? The U.S. capital  
21 market is the envy of the world from a liquidity  
22 perspective, from a pricing perspective, from a place to  
23 list. But from an underlying infrastructure perspective,  
24 in my humble opinion, it is creaking at the seams.

25 It will need the Commission to do more than nudge,

1 to create a system that is right for America. That's my  
2 view. But I'm not an American. I get proud when I can  
3 make little statements like that. But reconciliation is  
4 the key. We're going to talk about blockchain later.  
5 Right? And I look forward to that.

6 But we have votes going into the marketplace against  
7 positions that aren't necessarily reconciled. And we  
8 talk about securities lending; votes should pass with  
9 shares that have been lent. The lender should not have  
10 the right to vote. The person who borrowed them or the  
11 person who bought the shares from the borrower should  
12 have the vote.

13 We shouldn't be talking about these issues, in my  
14 humble opinion, now. What we should be talking about is,  
15 if there are shares in a customer account that are used  
16 to cover a short position in a brokerage position in this  
17 fungible mass, whether that person should get a proxy.  
18 That person today doesn't even know that their shares are  
19 not really sitting behind what's in their account.  
20 They're the issues we should be talking about.

21 So if we're talking about reconciled positions at  
22 record day, which is 45 days before the meeting -- which  
23 is, in my view, also quite antiquated -- then vote  
24 confirmation can happen.

25 But let's just be specific about what we're trying

1 accomplished.

2 So I only say that. I'm not trying to throw  
3 dispersions. But there are entrenched interests, and so  
4 I agree wholeheartedly with Ken that the SEC should  
5 mandate whatever it needs to mandate to get everybody in  
6 the room and put aside their individual needs and work  
7 this out because I do think that the pilot worked, or  
8 almost worked. And we got very close, so we need to just  
9 finish, finish that up. Thank you.

10 MR. YU: Katie?

11 MS. SEVCIK: Thank you. My team was involved in the  
12 pilot. And I think, Bob, the vote to vote the system,  
13 confirmation, it was successful in that it was a means to  
14 communicate. There's no argument there. It did allow  
15 for that communication.

16 But I think what we found interesting is that our  
17 expectation was that we were going to get requests from  
18 the participant side to -- again, in reconciling their  
19 votes, to be able to say, "You know, we've got some  
20 shares in firm name, and that should be part of our  
21 voteable position."

22 And so if it's in firm name, it's a registered  
23 position. And so we are expecting to get those types of  
24 information: "Please, please move our firm name position  
25 into a fungible mass for us." We didn't get that. We

1 to confirm because when we have this daisy chain of  
2 participants in the system, the issuer and the investor  
3 can't really rely on one single vote. They just have to  
4 rely on everyone promising that the party in the chain  
5 did what they promised to do. We can do that.

6 So there's no resistance. There's a philosophical  
7 difference, I think, about whether the position should be  
8 a reconciled state from the outset. If we all agree it  
9 should be, we can move on. But I think the last ten  
10 years, that's been quite a gray area.

11 MR. YU: Darla?

12 MS. STUCKEY: Thanks, Ted. And I too appreciate  
13 being invited here. I just wanted to give a little bit  
14 of background to Ken's statement about -- and to Bob's  
15 statement about this, and to let the group know that this  
16 was an effort that both the CII and the Society undertook  
17 to do.

18 And in fact Amy, Boris, and I were the two people on  
19 this end-to-end vote confirmation. And quite honestly,  
20 we were the hall monitors. And when we were there at the  
21 various meetings -- and I've got to tell you, it's like  
22 mind-numbing because if you don't do this for a living,  
23 it's very hard to understand -- but when we were in the  
24 room, the people behaved better. Then when we weren't  
25 there, the meetings would happen and not much would get

1 expected to see maybe an issue with potential trade, and  
2 we'd have one broker come back and say, you know, "Reduce  
3 ours," and another broker accept it.

4 All of that was built in a tool to allow that to  
5 happen, but the requests that came in were basically  
6 requests to validate the DTC position, which every single  
7 one of the participants should have. So yes, the system,  
8 again, successful for communication. But the  
9 participants and the players didn't use it to how we  
10 thought the system was going to roll out.

11 MR. YU: Alex, do you want the last word on this  
12 topic?

13 MR. LEBOW: Sure, just very quickly. Thank you. I  
14 just want to follow up on something Paul said, which is a  
15 very good and simple point, which is that brokers are  
16 great record-keepers. Right? That's what they do, they  
17 keep records. So they know which shares are lent.

18 Yet it's still permissible today for them to send or  
19 have their agent send a voter instruction form to a  
20 position for which there are no underlying shares  
21 actually to be voted. That's permitted. It's not a  
22 question of technology. It's a question of obligation  
23 and what's permissible. So it's a rulemaking question  
24 and I think an investor protection question that that's  
25 currently permissible.

1 And also just quickly on a point that Katie made  
2 about the difference between the registered side and the  
3 street side, there's a great natural experiment going on  
4 right now in that we have these two independent spheres,  
5 where largely the same process is taking place at a high  
6 level.

7 But it's taking place in two very different ways.  
8 On the one side you have a direct communications  
9 framework, where companies and funds can communicate  
10 directly with their shareholders. And on the other side,  
11 you have intermediaries and NOBOs and OBOs and omnibus  
12 proxies and a web of complicated relationships and  
13 incentives.

14 And I think it's very much worth further study of  
15 this experiment, observation of this experiment, and  
16 particularly on the cost side. I think it's been  
17 reported, and I think it's worth looking into more  
18 closely, whether it is indeed much cheaper to serve a  
19 registered position than it is to serve relatively the  
20 same process on the street side position. So I think  
21 that's something worth looking at more.

22 MR. YU: Larry, you want to take a few seconds and  
23 add your thoughts?

24 MR. CONOVER: Sure. Thank you. So I'm on the  
25 broker side. I participated in the steering committee as

1 to do that. And I think part of that is the  
2 communication, and part of that is making sure that folks  
3 are talking early in this stage and getting it done.

4 I'll reference Canada. There was a letter submitted  
5 by, I think, the Securities Transfer Association of  
6 Canada around this. Well, Canada took this up a couple  
7 of years ago. They looked at the process, and then they  
8 realized a lot of this was early stage vote confirmation.

9 And they actually recommended that they tabulators  
10 communicate back. And we get numerous requests every day  
11 coming in for those types of meetings up there. And in  
12 every single case, it's a missing position level. And in  
13 some cases, it's as simple as a depository position,  
14 whether its DTC wasn't received; in some cases, it was  
15 sent to the issuer, didn't get in to the tabulator.

16 So there's a process here, and I think the  
17 confirmation process can be achieved. We participated in  
18 the panel. Pilots are always great, and I can appreciate  
19 some of the comments that were out there. I know we  
20 participated. I was on that steering committee, and  
21 unfortunately, the meetings we chose were very clean and  
22 we didn't have a chance to use the tool for the intention  
23 that it was intended to, to validate, hey, we have  
24 positions in multiple cases; they seemed to be very  
25 straightforward, at least from our organization.

1 well, and I do think there's a lot of misunderstanding  
2 with how the process works. I think I disagree a little  
3 bit with thoughts that shareholders don't know what their  
4 vote positions are and that votes are not passed along to  
5 them. We do a lot of work around that.

6 Broker dealers are -- as mentioned, they have a lot  
7 of responsibility around ensuring customer assets,  
8 ensuring their investments, and just back to an ops  
9 question. I'm an ops guy. We pay out millions of  
10 dollars in interest and dividend payments a year, and  
11 that is balanced. So the process is there.

12 When I look at the concepts of overvote, and we  
13 actually view those as more undervoting, we do a lot of  
14 work to ensure that we're passing votes to eligible  
15 shareholders and making sure that they get voted. And in  
16 many cases we're submitting that, and we're not getting  
17 that feedback if they're voted.

18 And there's been a lot of talk about not being able  
19 to apply some of that. And I think that does go into the  
20 early reconciliation process that goes into there. Some  
21 of the studies and I think some of the comment letters  
22 that actually came out around this proxy panel showed  
23 that when they looked at some of these meetings, you were  
24 able to cure them.

25 So that means that operationally there's a process

1 So I think that there is some misinformation that's  
2 potentially out there, and perhaps a misunderstanding of  
3 a complex process. But operation, I think there's  
4 opportunities there.

5 MR. YU: Well, it's a great segue to the next  
6 question because you mentioned clean meetings. And we've  
7 had a couple of instances this past year or two where  
8 meetings were not so clean. I wonder, Brian, if you  
9 could talk about your experience with the P&G-Trian  
10 contest, and maybe even share your thoughts on what  
11 happened with Dell and going -- the appraisal rights and  
12 what happened there.

13 MR. SCHORR: Okay. Ted, thank you. David, the  
14 Staff, Chairman, the rest of the Commissioners, for  
15 having me.

16 I want to talk a little bit about P&G today, but the  
17 most important thing to take away is really not just the  
18 tidbits, but to think about what sort of solutions, what  
19 sort of looking forward? How can we tackle the issues,  
20 solve the problems that we identify?

21 But let me start by putting it in context. As Ted  
22 mentioned, I'm at Trian. We ran a proxy contest in 2017  
23 at P&G. The meeting was held in October of 2017. The  
24 results showed that it was likely the closest proxy  
25 contest to date.

1 But putting it in perspective, think about this:  
2 There were two and a half billion outstanding shares.  
3 There were three million beneficial holders. Nearly 40  
4 percent were Main Street or retail investors. That's two  
5 times the percentage of other companies in terms of  
6 retail ownership.

7 Of those two and a half billion outstanding shares,  
8 two billion shares actually voted. And the certified  
9 results showed a final voting margin of approximately  
10 one-quarter of one percent. Virtually every vote cast  
11 therefore had the possibility of being -- the potential  
12 to be the deciding vote.

13 Now, the meeting was held on October 10th, and it  
14 was not until November 15th that the preliminary  
15 certified results -- five weeks later -- that the  
16 preliminary certified results were issued. And at that  
17 point, the results showed that our candidate, Nelson  
18 Peltz, had won by 43,000 votes out of two billion.

19 Following the announcement, there was another --  
20 there was a review period. The company asked for a  
21 review period. And there were 100,000 proxy cards placed  
22 on a table that had to be reviewed and examined by both  
23 sides. That review process, as I said, took two and a  
24 half weeks, and the final results were then issued on  
25 December 15th, more than two months after the annual

1 meeting.

2 Ultimately, both we and P&G settled. Nelson Peltz  
3 joined the board. But let me talk about some of the  
4 problems, and then we can talk about maybe some of the  
5 solutions.

6 We've talked about overvoting. Well, what we found  
7 in the case of P&G was that there was certain overvoting  
8 by securities intermediaries that had not been  
9 reconciled. But what was most interesting was that the  
10 reconciliation that needed to be done by the transfer  
11 agent -- I'm sorry, by the tabulator, by the independent  
12 inspector of elections, wasn't done at the time that the  
13 preliminary results were announced.

14 So when the announcement came out that we were up by  
15 43,000 votes, we were also told that, by the way, there  
16 hadn't been a final reconciliation done. So think about  
17 that. The results come out. It's a 43,000-vote spread  
18 differential out of two billion votes. But by the way,  
19 there's an asterisk: We haven't finished the  
20 reconciliation yet. And this is weeks after the annual  
21 meeting. So I think that's something that needs to be  
22 focused on.

23 Number two, there were chain of custody issues.  
24 We've talked about the intermediaries, the fact that when  
25 you have a break in the voting chain of authority between

1 voting intermediaries like Broadridge, the custodian, the  
2 sub-custodians, and the company's registered list,  
3 there's a potential for shares not to be included in the  
4 tabulation. And as a result, there's no consistent end-  
5 to-end confirmation. But let me give you some examples.

6 One example that has been written about is there was  
7 one major financial institution that had a pocket of  
8 shares separate from its main allocation of shares, but  
9 that through chain of custody issues, the shares in that  
10 account -- and it wasn't just P&G shares; it was a  
11 commingled account with lots of different shares from  
12 different companies -- but those shares, it turns out,  
13 had been cast. The votes had been processed, or so they  
14 thought, for a decade.

15 But what they learned was that in each contested  
16 election during that decade, during that time period, the  
17 shares were thrown out by the independent inspector, and  
18 they didn't know that. The financial institution did not  
19 know that the shares that they had thought they had voted  
20 had been excluded from the tabulation in a contested  
21 election during every election during that ten-year time  
22 period.

23 And again, it was chain of custody issues. So when  
24 we made the phone call to that shareholder and said, "By  
25 the way, we just learned that your shares hadn't been

1 counted," of course they were shocked.

2 A second example is when you have breaks in the  
3 chain of custody because of changes in the name. And one  
4 example was, there was a small fund administrator that  
5 was excluded from voting its shares because the name of  
6 the Broadridge client was changed followed the transfer  
7 of its fund administration business.

8 There was a sale of the business, and the name  
9 changed, and the custodian, though, remained unchanged.  
10 The beneficial owners had not made any change to how they  
11 held or voted the shares. And yet those shares were  
12 kicked out.

13 Finally, another example is an institution had its  
14 shares excluded because of conflicts on the face of the  
15 DTC omnibus proxy. Right? There are lots of different -  
16 - we call them pieces of paper, but some of it  
17 electronic. But there were conflicts on the face of the  
18 DTC omnibus proxy and the Broadridge proxy, which led to  
19 the question of who had the right to vote. Was it the  
20 financial intermediary or the beneficial owner?

21 And then there's the symbol case. There's the  
22 symbol case of the lack of the paperclip. Shareholders,  
23 retail shareholders, showed up at the annual meeting at  
24 P&G. They wanted to vote their block of 50,000 shares  
25 that they had held through generations. Their

1 grandfather had voted at the meeting.

2 They came with the right paperwork. They had asked

3 for and had received their legal proxy. And so they came

4 to vote their shares. They were handed a ballot; someone

5 from the company or from the transfer agent had walked

6 around the room, handed out ballots.

7 They filled out their ballot. They wanted to turn

8 them in just before the meeting -- before the vote

9 tabulation closed. They did so, but asked for something

10 very small. They asked for a paperclip. Well, it turns

11 out that they wanted to vote their 50,000 shares.

12 They didn't get a paperclip, but they turned in

13 their legal proxy and their ballot. And when the

14 announcement came out a few weeks later that we had won

15 by 43,000 shares, take a guess who called us? It was

16 that shareholder who was sitting in front of us that

17 said, "You know what? My 50,000 shares were the 50,000

18 shares that pushed you over."

19 And we were very happy. We were very excited. But

20 I talked to the guys who were then doing the review

21 process, and I called them down in Delaware, and I said,

22 "Guys, humor me. See if you can find that ballot for

23 me." And it took four days in the 100,000 ballots that

24 were on the table, but they called me back four days

25 later, and they said, "You know what? Those shares

1 weren't counted. They were not tabulated."

2 And I said, "Why?" Well, they said, "Because the

3 legal proxy was in one file folder on one side of the

4 room. The ballot was in another file folder on the other

5 side of the room. And no one bothered to put them

6 together. And the exact names, everything was perfect

7 with the way the forms were filled out. But simple

8 things like that make the process complicated.

9 Okay. Then there were issues of empty voting. We

10 talked very briefly of the empty voting issue. Think

11 about this: context of employee stock ownership plans.

12 There's an allocation of shares to the participants. The

13 participants are current employees and retirees.

14 And then there are unallocated shares, which are

15 held for future participants. And in many plans, those

16 shares are voted on a mirror percentage basis to match

17 the shares that were allocated and voted by actual plan

18 participants.

19 So you have a scenario where most of the plan

20 participants -- typically they're either members of the

21 company, they're employees of the company or former

22 employees -- and those shares, as you would expect, are

23 typically voted, the vast majority, in favor of the

24 company's slate.

25 But how about those unallocated shares? Does it

1 feel right that those shares should also be voted for

2 management, even though they've been unallocated? So I

3 raise the question of whether or not that's a different

4 way of having an empty voting situation.

5 The costs: We've talked about all of the

6 complexities here. But think about all of the costs

7 involved -- the processing fees, the mailing fees, the

8 transportation, the postage, and all of the costs

9 incidental to the solicitation. It's a very expensive

10 proposition.

11 In P&G, the company disclosed \$35 million in costs

12 in excess of what they had spent in an uncontested

13 meeting. We disclosed costs of \$25 million. It's just a

14 very, very expensive proposition. I mean, think about

15 that. You have a situation where \$60 million worth of

16 costs was spent to solicit votes.

17 And I will say this, that at the IAC meeting back in

18 September, I was fortunate to be accompanied by P&G's

19 chief legal officer. And one of the things that Debbie

20 Majoras did mention was that the costs were exacerbated

21 by limitations on electronic distribution of proxy

22 materials in contested elections.

23 And again, I think the fact is that there has to be

24 -- there needs to be a way of looking at the question of

25 whether or not proxy materials can be sent

1 electronically. And I know there were lots of issues,

2 but to require or to have a situation where most of the

3 materials are being sent by hard copy in this day and age

4 is very, very difficult when you have three million

5 beneficial owners.

6 It's a very expensive proposition to be sending out

7 materials, to be paying for the mailing costs, the

8 processing cost, the transportation costs. And that gets

9 you into the question of whether or not there's adequate

10 retail participation when you have electronic voting.

11 And I know that's a question that we all should be

12 focusing on: Is there a way to encourage retail voting,

13 and does it decrease when electronic voting is used? But

14 we have to, in this day and age, think about the

15 situation of what is the way of reaching shareholders,

16 and what is a cost-efficient way?

17 So let me conclude by a couple of recommendations.

18 We may talk a little bit later about a universal proxy

19 card. I think that is one way of eliminating some of the

20 issues where you have the question of which is the last

21 card voted, and also conflicting cards where people try

22 to write in nominees on the company card or the dissident

23 card, and both cards end up getting thrown out.

24 I think there needs to be rules to have end-to-end

25 confirmation. And assuming the SEC concludes they have

1 the requisite jurisdiction over the parties, there should  
2 be a requirement of all intermediaries to provide the  
3 information necessary to facilitate end-to-end voting.

4 And I agree with Ken Bertsch and CAI. I think  
5 they're all -- those are short-term recommendations. I  
6 think there need to be longer-term recommendations too.  
7 I think we're almost at a point where the immobilized and  
8 fungible share system should be reconsidered and moved  
9 toward a system of traceable shares, specific share  
10 ownership, and identification, and at the same time  
11 safeguarding identities, holdings, and voting decisions.

12 And the way to get there may well be -- and I think  
13 alternatives should be studied and considered, whether  
14 it's digital voting platforms, a digital central ledger  
15 book entry system, or blockchain private permissioned  
16 technology with a central gatekeeper.

17 I think those are all the sorts of things that  
18 should be looked at very carefully. And I think the  
19 Commission should consider implementing a series of pilot  
20 programs to test those various alternatives.

21 MR. FREDRICKSON: Thank you. You all are writing  
22 our segues for us.

23 Following up on Professor Coates' suggestion  
24 earlier, one impediment that's been identified to  
25 efficient voting is the effect of the bona fide nominee

1 ability for investors to pick and choose among candidates  
2 when they are voting in a contested election.

3 I note that in many cases, while we talk about the  
4 system being broken, I think we also should acknowledge  
5 that the system can work. It's a matter of the  
6 complexity of the system. There are aspects that don't  
7 work well. There are aspects that can work much better.

8 And that's really where we get to when we talk about a  
9 potential need for a universal proxy.

10 We can help a client vote right now. We can help a  
11 client vote, and not just vote for one slate in an  
12 election campaign. It requires requesting a legal proxy.

13 We know that the difference between the registered  
14 shareholders and the beneficial owners, as Alexander  
15 alluded, means that there are different ways that the  
16 whole process works.

17 The process does work better for registered share  
18 owners. But that's not the process through which most of  
19 the shareholders own their shares these days. And so  
20 creating a system that allows the beneficial owners a  
21 less complex way to make their choices is ultimately  
22 very, very valid.

23 Ultimately, that means that most participants have  
24 come to agree that the universal proxy can be a very good  
25 solution.

1 rule on investors' ability to vote for the directors they  
2 want in contested elections.

3 And so this has been a subject of much debate  
4 recently. And so what have we learned in the recent  
5 debate and commentary about the possibilities and the  
6 challenges of addressing this issue? And I think we'll  
7 start with Bruce.

8 MR. GOLDFARB: Thank you, David and Ted, and to the  
9 Commissioners and the Staff for having me here as well.

10 As a proxy solicitor, we represent both issuers and  
11 investors in election campaigns. And so we don't  
12 particularly have a one-sided view of a lot of these  
13 issues. Our job, to the extent that you're talking about  
14 proxy plumbing, we are nicely-dressed plumbers, I guess.

15 And so we use part of the process to really just help  
16 our clients be guided through the issue.

17 With respect to how the process works right now,  
18 especially in a contested election, as you identify with  
19 a bona fide nominee rule, the challenge can be as to how  
20 to put together your slate in a contest, who's willing to  
21 run, and ultimately who the investor can select to vote  
22 in the campaign.

23 And so I think this leads towards, ultimately, the  
24 discussion of whether or not the current system works in  
25 terms of a contest with competing slates and the lack of

1 MR. FREDRICKSON: My guess is not universal. I  
2 don't know.

3 Darla, do you want to pipe in on this?

4 MS. STUCKEY: Okay. You want me to talk about  
5 universal proxy right now? Okay.

6 I'm so happy Brian was here because I'm fascinated  
7 by the stories of the P&G fight, as somebody who studies  
8 this in a group who cares about that. We all wondered  
9 what happened.

10 And I will just say my own story is I didn't get to  
11 vote my P&G shares. I had a few in a managed account  
12 through Merrill Lynch. I did receive a proxy card. I  
13 misplaced it. It was actually the weekend before when I  
14 decided I really wanted to vote, and I went looking for  
15 the card.

16 And it was a holiday weekend, I believe. So Friday  
17 afternoon I start thinking, "Where's my card?" I try to  
18 call my broker, the guy I know. There's no way he can  
19 figure out how to get me a card over the weekend or on  
20 Monday, which was a bank holiday. And I only had one  
21 card because I owned less than a hundred shares, and you  
22 didn't send to me. So there'll be another -- there'll be  
23 more on that later. That's another issue.

24 But in any event, I was unable to vote. And I --  
25 yes, maybe I shouldn't have misplaced my proxy. But I

1 know that was another problem, that it's impossible to  
2 get your control number if you don't have that card. And  
3 you can't call Broadridge, and they won't give you it  
4 over the phone. So we need to make it easier. That's a  
5 very small point.

6 But let me get to the universal proxy card. I agree  
7 with John, I think it was, who said that several years  
8 ago we were here, and the issuer community and some of  
9 the lawyers that support companies in proxy fights were  
10 kind of against universal ballot.

11 Things have changed a little bit. I agree that more  
12 people seem maybe ready to can it on the issuer side. It  
13 really isn't a "depends," obviously; sometimes it helps  
14 you, sometimes it hurts you. I've heard stories where,  
15 "Look, this is a negotiation. Who's going to be on the  
16 board?" There are times when a company may say, "Yes, it  
17 wouldn't be such a bad thing if one of the dissidents got  
18 on the board, and maybe we would lose this one."

19 However, it's still fraught with problems on  
20 outcomes. Like I don't know how you know -- and maybe  
21 the smarter people can say this -- but I don't know how  
22 you know, when you go into a contest if you have three or  
23 four or five on one slate and eight on the other, exactly  
24 which of the five will win and which of the eight you  
25 would lose.

1 So my worry is that you lose an audit committee  
2 chair and you get a comp committee person, which is  
3 typically what the dissidents want to be on, comp or  
4 maybe nom and gov. But so I don't know how you figure  
5 out what the outcomes are going to be.

6 And Ken, I read your letter with interest about  
7 "disclose if there's somebody who's unwilling to serve if  
8 a certain person wins." I thought that was very  
9 creative. I like it. However, in my mind there are  
10 still too many permutations unless you guys can tell me that  
11 you sort of know in advance who's really going to win and  
12 who's not.

13 But to my mind, that all happened sort of before the  
14 vote because there is a lot of negotiation in these  
15 things. So I say that only to say there's still a lot of  
16 wrinkles. My overarching view is NOBO/OBO, vote  
17 confirmation, getting rid of intermediaries or  
18 streamlining the process. They're all much more  
19 important to the system than the universal ballot.

20 I don't think you have to deal with that fist. I  
21 don't think you have to make it mandatory. But when you  
22 realize that there's only maybe 20, 25, maybe 50 meetings  
23 a year that are actually proxy contests, and there's  
24 thousands, 5- to 8,000 U.S. annual meetings a year, I  
25 think we should focus on fixing the bigger problem rather

1 than the smaller problem.

2 So that's kind of where the Society sits. However,  
3 I was also told, "Don't fight it. If it's coming, that's  
4 fine. People will deal with it." But there are things  
5 that you have to look at, being what the outcomes are,  
6 how many shareholders should be solicited. I also thought  
7 Ken's letter was thoughtful on that.

8 And we would be of the view that the dissident  
9 should be required to solicit more, maybe all, maybe 75  
10 percent. But it doesn't seem fair to corporations that  
11 they have to solicit to everyone and bear the costs, and  
12 the dissident doesn't. And if they violate the rules,  
13 then should be held to account whether that's a fine,  
14 whether that's some kind of sit-out period. That could  
15 be looked at.

16 The other really, really interesting thing, though,  
17 from my standpoint need sitting on the Broadridge  
18 steering committee over the years, is: What the hell  
19 does a -- excuse me -- what the heck does the proxy card  
20 look like?

21 (Laughter.)

22 MS. STUCKEY: How are you going to get all this  
23 stuff on the proxy card? I mean, so maybe we just  
24 dispense with the card and put it all on an electronic --  
25 it should be an email. It should be some sort of

1 electronic proxy, where all the names are there. It's  
2 easy to tell who are the dissidents? Who are the  
3 incumbents?

4 But right now, we had so many meetings over how you  
5 truncate a shareholder proposal title to fit it on the  
6 proxy card a few years ago, and Bob will remember this --  
7 I mean, the fights over that -- we've got to move forward  
8 here.

9 So anyway, there are those kinds of problems that  
10 will invariably come up. So I'd like to see somebody  
11 tackle those, maybe a subcommittee, maybe the Broadridge  
12 -- I don't know who it is, but somebody that cares about  
13 what it looks like on the proxy because you know if it's  
14 alphabetical, people aren't going to know who's who. If  
15 it's one side gets first and the other side's at the  
16 bottom, they're going to have an advantage -- you can  
17 come up with a million things. So that's another kind of  
18 impediment.

19 I don't want to go too far. I'll stop there. But  
20 there --

21 MR. FREDRICKSON: We're keeping this lively. This  
22 is fantastic. And it looks like there's a number of  
23 people who'd like -- we want to hear from everyone. If  
24 folks could keep their comments short. First Brian.

25 MR. SCHORR: Okay. A couple things. Firstly, as I

1 alluded to before, the use of the universal proxy may  
2 well eliminate some of the problems that we're trying to  
3 tackle today, identifying the last voted card and invalid  
4 conflicting cards, as I said, where a shareholder tries  
5 to mix and match.

6 I do think that it's possible to have a proxy card  
7 where there's mandated uniform presentation and  
8 formatting requirements. I think that there needs to be  
9 rules governing what happens when there are mismarked  
10 cards, including an opportunity to resubmit and cure a  
11 mismarked card, time permitting, where the number of  
12 nominees that have been selected by the shareholder  
13 exceeds the number of vacancies.

14 And finally, we agree that there should be a  
15 solicitation threshold that would trigger the requirement  
16 of universal proxy. The 2016 proposal had required a  
17 majority of the outstanding shares, and we would ask the  
18 SEC that if it does decide to change that from majority  
19 to something else, that there is a further study and  
20 review of that percentage and of the economic impact to  
21 the dissident shareholder because you don't want a  
22 situation where the solicitation becomes prohibitively  
23 expensive, and thereby rendering the ability to use  
24 universal proxy -- making it illusory.

25 I mean, just commenting, Darla, on your comment, the

1 reconciliation of their position to up front. The  
2 tabulator should also do some pre-reconciling so that you  
3 know ahead of time -- where you stand, what you're  
4 expecting, and then as problems come in, they can be  
5 addressed.

6 And I think that's where the end-to-end vote  
7 confirmation pilot program tried to address, is there  
8 needs to be ongoing communication. Unfortunately, you  
9 can't just, "Oh, we're reconciled. We have no problems."  
10 Things do happen, particularly with the way securities  
11 move.

12 So I think all of these are things that we have to  
13 take into consideration. and I think they're low-hanging  
14 fruit, and then get all the way back around to the  
15 challenges with a contest. We do feel that a universal  
16 proxy ballot would take out some of the confusion for the  
17 shareholders.

18 They are being bombarded with information from both  
19 sides of -- the management and the dissident sides. And  
20 I think it's very confusing, and probably what happens is  
21 they vote multiple times or they don't vote at all. And  
22 I think a universal proxy ballot would help clear up some  
23 of that confusion.

24 But mainly what we need to look at as an industry is  
25 let's take all of these components and figure out how to

1 fact is that to solicit a hundred shares, it would  
2 probably cost more money to actually send out the  
3 materials and to pay the mailing costs, the processing  
4 fees. And by the time you get through it, it would turn  
5 a \$25 million budget into just an extraordinary 50- or  
6 \$100 million budget. You just can't do it.

7 MS. STUCKEY: No. I understand that. And in fact,  
8 corporations use notice and access and stratify the vote  
9 for that very reason.

10 MR. SCHORR: Right. Exactly.

11 MS. STUCKEY: We were very concerned about the cost.  
12 But that leads us to we need email. Yes.

13 MR. FREDRICKSON: Sherry, is that your card that you  
14 wanted to weigh in on?

15 MS. MORELAND: Yes. And thank you for inviting me  
16 to participate today.

17 I was very interested in Brian's comments because I  
18 think they sort of in one event highlight all of the  
19 problems that you can run into in a proxy tabulation  
20 event. And unfortunately, the stakes were very high.  
21 And in any type of contest, and certainly one as high-  
22 profile as P&G.

23 But I think what it points to is that there's a need  
24 here to do several of the things that are being talked  
25 about today. The first is requiring brokers to do pre-

1 put them together so the vote process is clean at the  
2 end. I believe at the majority of events it is a very  
3 clean process. But the P&G event points out when  
4 something goes wrong, it can really go wrong.

5 MR. FREDRICKSON: I see David, Bruce, Ken, and Bob.  
6 So let's go quickly so we can move on, but I want to  
7 hear from folks.

8 David?

9 MR. KATZ: Thank you, and I appreciate the invite.

10 Universal proxy can be helpful. But the truth is  
11 really going to be depending on the details, and I am  
12 very concerned because the details will matter, little  
13 things like how you designate who is on which slate and  
14 things like that, and whether it's alphabetical or other  
15 things, or one side bold and -- you know.

16 It also doesn't solve a lot of the other problems,  
17 though, that we've talked about because you could have  
18 multiple universal proxies that would be sent out in a  
19 contest. And who are you designating as your proxy  
20 holder and all those wonderful things that come with it.

21 But the bottom line is that the problem really is  
22 getting to allow people to vote. And as Chairman Clayton  
23 started with, long-term Main Street shareholders, they  
24 shouldn't be disadvantaged in this system. Companies  
25 have to communicate with all their shareholders.

1 Brian, I understand the point about cost. But I  
2 don't think companies -- I think companies and dissidents  
3 should be on the same page as far as that. One side  
4 shouldn't be advantaged or disadvantaged. And at the end  
5 of the day, we need to figure out a system that allows us  
6 to communicate directly with the beneficial holder.

7 I think the technology exists. We've got a lot of  
8 people up here that can talk about it today, and I know  
9 we've got get to that. But it's a question producing  
10 something that really works. And the system, yes, we  
11 have a great capital system.

12 The voting system stinks, for lack of a better word.  
13 It doesn't work well. There are more problems than  
14 we've even talked about here in normal situations, but  
15 they don't matter, for the most part, because the votes  
16 on a proposal may not make a big difference at the end of  
17 the day.

18 But when you've got a client that needs to get a  
19 majority of the outstanding shares on a particular  
20 proposal to amend its charter to do something else that's  
21 ministerial, and votes don't get counted or votes don't  
22 get made, and nobody has any ability to track who voted  
23 and didn't vote, we have a system that doesn't work.

24 And that doesn't accrete to anybody's benefit. It's  
25 to everybody's detriment. And I think that we really do

1 Apparently some brokers don't know that.

2 The bigger challenge sometimes is that brokers don't  
3 even know how to set up an account to make it a non-  
4 objecting beneficial owner. I walked my wife into a  
5 brokerage firm, a large brokerage firm, to set up an  
6 account for her, and she wanted to be a NOBO. The person  
7 who helped her set up the account had no idea what the  
8 meant.

9 They went and they asked for the manager. The  
10 manager didn't know what a NOBO was, didn't know what an  
11 OBO was, couldn't find it on the form used to set up the  
12 account, couldn't answer whether the default was OBO or  
13 NOBO, promised they would call back. No one called back.

14 We set up the brokerage account with a different broker.

15 But it's endemic in the system that we can't  
16 communicate with investors because we have this  
17 distinction between OBO and NOBO, and when we are able to  
18 reach out to the NOBO, we can improve participation. We  
19 can improve information. We can help those investors  
20 understand and make informed decisions.

21 But there's such a significant portion of the  
22 investor base who doesn't have that kind of outreach, and  
23 that's really where the system needs to be fixed.

24 MR. FREDRICKSON: Yes. We'll come back to that in  
25 just a little bit.

1 need to take a step back and figure out what the right  
2 system is. There are so many costs built into this  
3 current system that I think that if you revamp the  
4 system, you'd probably have a payback of two or three  
5 years, when you think about it, and take out some of the  
6 different levels.

7 I do know that everybody has their own economic  
8 interests here. But we need to figure out a system that  
9 works.

10 MR. GOLDFARB: Interesting dialogue here from when  
11 the universal ballot was proposed a few years ago. And  
12 who opposes the universal ballot and who's in favor of it  
13 seems to shift from when the rules were proposed, which  
14 were largely fair and balanced. In my view, the Staff  
15 did a great job and considered all sides to create a  
16 level playing field. The details are where we go.

17 But I agree with David that it's very much a concern  
18 about the whole system and the issue of getting people to  
19 vote, and the issue of who can vote and how they vote.  
20 And in many ways, it goes to how shares are held.

21 In the broker system, Darla's experience is very  
22 telling because she is quite knowledgeable about the  
23 proxy process and yet she was unable to get her shares  
24 voted. I know you can call your broker and get your  
25 control number. I know that. Not everyone knows that.

1 Bob?

2 MR. GOLDFARB: Yes. Thanks, David. Just a quick  
3 comment.

4 I think, as Sherry said, we need to walk and chew  
5 gum at the same time. I think we can do multiple things  
6 her. And on universal proxy, the SEC put out a very good  
7 proposal two years ago, and I think with some minor, the  
8 work has already been done. So I don't think that needs  
9 to derail anything else that's happening.

10 On the proxy contest being -- you don't know what  
11 the outcome is going to be; it's uncontrolled. You might  
12 have the nominating committee chair. That's what it is  
13 in a contest. You've got multiple -- you've got all the  
14 shareholders voting, and you don't know what the outcome  
15 is. Just like the U.S. Senate, you couldn't necessarily  
16 prioritize keeping a particular Senator who had  
17 particular things to offer. It's a contest.

18 So I do think that we hear that objection mainly  
19 from activist investors who are worried that the  
20 shareholders will withhold support from various people on  
21 the management slate, and thereby possibly lead to just a  
22 numbers game.

23 And I think that's just up to the activists.  
24 They've got to tell people, "Hey, if you want to elect  
25 this person to the board, you need to coalesce around who

1 you're going to oppose."  
 2 MR. SCHIFELLITE: Okay. A few points. I'll try and  
 3 make them very quick.  
 4 So first, universal, we can do it. We've said we  
 5 can do it. We've done it, I think. In one instance we  
 6 do need rules of engagement. Right?  
 7 Second thing, I think it's very important to get the  
 8 facts straight with regard to what Brian said. And I agree  
 9 with what he said. But the 100,000 cards were the  
 10 registered cards, not street. Okay? Those are all the  
 11 registered cards. That's the piece that took weeks to  
 12 figure out. The street position, once the meeting was  
 13 done, our final vote was issued.  
 14 Now Brian brought some points up about instances  
 15 where votes were thrown out. Again, it gets back to if  
 16 we did the early processes everybody's talked about, if  
 17 that voting confirmation were in place, that could have  
 18 been avoided. You've already caused change by just  
 19 advertising this issue because we've already seen an  
 20 improvement. So I get back to vote confirmation, et  
 21 cetera.  
 22 On the "can't communicate," the data show -- because  
 23 we do process for registered side in certain instances as  
 24 well as the street -- the data does show that the street  
 25 side retail votes at a higher level than registered,

1 where there is a direct process. But do we want more  
 2 retail shareholder voting? Absolutely. And we have the  
 3 technology and new technology that's going to enable  
 4 that.  
 5 But there's more voting taking place on the street  
 6 side versus the registered side, and again, in that  
 7 situation with P&G and the registered positions, there  
 8 were two different entities trying to decipher the  
 9 100,000 cards. On the street process, we see both sides.  
 10 What's critically important is that you know the  
 11 last vote in. I don't know how you do that on the  
 12 registered side when Party A, who represents management -  
 13 -  
 14 MR. FREDRICKSON: Hold on just a second.  
 15 (Pause)  
 16 MR. SCHIFELLITE: I think somebody's trying to cut  
 17 me off.  
 18 (Laughter.)  
 19 MR. SCHIFELLITE: Usually it's music that does that.  
 20 MR. FREDRICKSON: You paid for that mike.  
 21 MR. SCHORR: But the management had an entity that  
 22 did that. Opposition had an entity that did that. And  
 23 you try to put it together: How do you even know who the  
 24 last card is? You don't know.  
 25 On the street side, we know because we're doing both

1 sides. It's all tagged. It's all monitored. It's all  
 2 audited. One of my props here is all the audits that  
 3 take place of these votes. So when people say, "I don't  
 4 think it's right, and it's broken," there's a lot of  
 5 outside data here which I think is unique.  
 6 I don't know if anyone else is doing the level of  
 7 audits that we do to say that the process is right.  
 8 Doesn't mean we don't make mistakes. It means that it is  
 9 monitored. We share this with corp fin and our steering  
 10 committee every year, all the different audits, et  
 11 cetera.  
 12 So I will end there. But I think it's important to  
 13 make that distinction between the registered side and the  
 14 street side.  
 15 MR. FREDRICKSON: Thanks. Maybe next time we'll get  
 16 an orchestra that has a swell to synch up.  
 17 (Laughter.)  
 18 MR. FREDRICKSON: So let's touch something less  
 19 controversial and talk about the economic incentives of  
 20 intermediaries and what ways we may be able to improve  
 21 communications for beneficial owners to communicate  
 22 directly, mindful of the fact that there's a system in  
 23 place that rewards certain conduct and behaviors, and how  
 24 to be mindful of that, of any changes. And let's start  
 25 with Larry.

1 MR. CONOVER: So just a couple comments. The  
 2 delivery of shareholder reports and proxy voting is just  
 3 one small part of a larger system around our street  
 4 ownership. I think we've seen a large growth in street  
 5 ownership. Our markets function.  
 6 We've heard a lot of comments around today --  
 7 there's average trading volumes over billions of shares  
 8 going on. I think beneficial ownership comprises over 95  
 9 percent of share ownership today. And I think in some  
 10 new public corporations, it's 100 percent, trying to go  
 11 towards a more paperless society.  
 12 When I look at the relationship a client has with  
 13 their broker, it's more than just proxy. So they come to  
 14 a broker to trust themselves with their investments. We  
 15 have an ongoing relationship with that customer, assist  
 16 them with their investment process, their shares.  
 17 I think our overall incentive really is to create  
 18 that ultimate customer experience for that customer. And  
 19 that includes providing a holistic user-friendly voting  
 20 service.  
 21 So typically, a customer doesn't own one issuer;  
 22 they probably own multiple stocks in their account. They  
 23 want a friendly, reliable system, to be able to vote all  
 24 of their shares and not just a one-off engagement out  
 25 there.

1 So I think in short, I think there is a lot of  
2 incentive for brokers to create a better process with  
3 that. We have a voting platform on our website. I think  
4 there was some commentary around the program. So we do  
5 have a site right on our website where, when you log into  
6 your website, you can see all your active meetings. You  
7 can actually pull up your material. And you can actually  
8 vote. And we're hoping that creates greater e-delivery.

9 We see that. That's going to help increase -- or  
10 reduce costs overall in the process. So we've seen great  
11 success with that. And it is a simple site that allows  
12 you to go in and look at everything, and not just one  
13 particular meeting when you get a vote. So we're hoping  
14 that increases retail shareholder participation. And  
15 really, I think there's a lot of talk here around the  
16 operations and everything. I think we may even be able  
17 to get into it.

18 But I think our greatest improvement opportunities  
19 are making it easy for the customers. And is that making  
20 it easier to deliver material in the formats that they  
21 want? We pretty much have e-delivery, and we have paper  
22 today.

23 The email rates are constantly going up, but I still  
24 think there's some improvements to that. I think the  
25 rule is quite a bit old. It does require -- and I

1 believe the way it's worded is it requires us to prove  
2 that the customer has internet access.

3 So it can be a multi-step process that gets a little  
4 cumbersome. And we've seen instances where the  
5 shareholder just doesn't take those extra steps to do  
6 that. But ultimately, if there's the desire and they ask  
7 for it, that's how they actually want the material.

8 So I think there's a couple of comments out there  
9 and some opportunities around improvements to deliver  
10 material to the customers the way they want it, and allow  
11 for an easier voting platform.

12 MR. FREDRICKSON: David, did you have a few  
13 thoughts?

14 MR. KATZ: Yes. I'll be very brief here because I  
15 think the discussion on technology is quite important.

16 But I think that we need to reduce complexity here.  
17 I think that to the extent we can develop some type of  
18 universal system, yes, it does mean we would be cutting  
19 out intermediaries. Frankly, the economic incentives at  
20 the inventories shouldn't matter at the end of the day.  
21 It should be the economic incentives to the people who  
22 want to cast their vote, and to the people that need to  
23 get their vote, whether it's dissident or the company.

24 And I think that should be much more what's driving  
25 the process. And I think that there are ways, using

1 technology -- and we'll probably get into OBO and NOBO a  
2 little bit -- but there's a lot of ways that the system  
3 can be simplified to allow direct communication to  
4 provide, either for electronic or other methods of  
5 voting, they can be confirmed and can make everybody a  
6 much more active participant in the system.

7 MR. FREDRICKSON: John, then Alex.

8 MR. ZECCA: Well, thank you, David, and thanks to  
9 the Commission for hosting.

10 I think when, from NASDAQ's perspective, we bring to  
11 the table the fact that we work with our listed companies  
12 -- we have a 3,000 public companies listed on NASDAQ --  
13 and hear their concerns. We're a listed company as well,  
14 so we're subject to the same responsibilities and  
15 obligations.

16 I think when we look at the cost and the  
17 intermediary piece, I think one of the questions we focus  
18 on is the accountability. And I think in a number of  
19 ways, there's a real question of the cost being divorced  
20 from the accountability because the issuers and  
21 ultimately investors are paying the cost, but they're  
22 not really having a direct -- the issuer, as the proxy  
23 for the ultimate owner, doesn't have the ability to  
24 select the intermediaries. And I think the question is:  
25 Would that add a greater level of accountability?

1 I think normally, when you have a service cost  
2 associated with it, the person, the customer, has a say  
3 on both aspects of it. Here we get a bill every year for  
4 the intermediaries. Actually, I think last year we got  
5 four for one meeting. But it's very hard to deconstruct,  
6 and we don't have a choice.

7 So I think the question is: If we added more in,  
8 would that then develop the potential for competition,  
9 probably on a broader level? Would there just be a level  
10 of accountability that doesn't exist because nobody  
11 really has an incentive right now to go for extreme  
12 efficiency. I don't think it's that anyone's being a bad  
13 actor, but that's just the economic reality.

14 So I think that would be one of our core suggestions  
15 when it comes to how to better structure the markets,  
16 that the incentives are better aligned with the  
17 obligations.

18 MR. LEBOW: Just to follow up on that, I think it's  
19 worthy of very detailed study because it's quite  
20 counterintuitive and quite esoteric, the way the  
21 incentives in this market work and the way the entities  
22 interact with each other.

23 So as John said, the entities choosing the service  
24 provider, the brokers and banks, are not paying. The  
25 entities paying are the issuers, public companies, and

1 funds. Their role is to pay invoices. The market  
2 provides them no choice of the intermediary. And so the  
3 incentive -- in other words, they have no ability to  
4 approve the overall service. They have the incentive but  
5 no ability, and the ones with the ability have no  
6 incentive.

7 So you have a very curious situation. And this is  
8 not a separate question from the NOBO/OBO question; it's  
9 directly a result of the NOBO/OBO issue. The reason that  
10 issuers have no choice is because there are a whole bunch  
11 of OBOs, as high as 60 percent of the shares, who are --  
12 in many cases who have elected to be OBOs because of  
13 default provisions in brokerage agreements that they  
14 don't know about.

15 There's no competition in this market that's aligned  
16 with the incentives in the interest of issuers and  
17 investors and shareholders. And that, I think, is the  
18 fundamental problem, that if there's one thing, the  
19 common underlying this, that afflicts this market, is  
20 that.

21 MR. FREDRICKSON: Alex? Sorry. Alex, thank you for  
22 making those comments. When I look at this market, and  
23 this hasn't changed in 20 years, we can't sit here as a  
24 roundtable and believe that we are discussing new  
25 phenomenon here. This is a deep-rooted Gordian knot.

1 And you can't just take one piece off; you have to really  
2 get to the core of it.

3 But that is the basic flaw, in my view, in the  
4 system. I agree with what Larry said: Customers should  
5 have the right to have information. Investors should  
6 have the right to have information delivered to them  
7 wherever they want to in a very convenient way.

8 No one disagrees with that. But when you have a  
9 system where the intermediary selects its agent for the  
10 distribution, and it can pass the cost for that to an  
11 issuer that has no ability to influence how it's  
12 communicating with its shareholders, you've got a system  
13 which is really structurally quite flawed, in my view,  
14 from an economic perspective.

15 And that is why people that service intermediaries  
16 have to pay to win contracts. There's revenue-sharing.  
17 I mean, there's nothing new here. This was documented in  
18 minute detail by the New York Stock Exchange after the  
19 2006 proxy review.

20 Every time there's a major step forward in  
21 technology, the cost of communication goes down, yet the  
22 rates actually don't change. They only change when  
23 there's enough pressure in the system to cause the New  
24 York Stock Exchange to say, then, "You're right." That  
25 is not a system that will drive innovation. That's not a

1 system that actually will bring costs down in line with  
2 what technology will allow.

3 MR. FREDRICKSON: Thank you. So let's move on to  
4 OBO/NOBO, then. So assuming that we don't end that  
5 system, is there a cost-efficient way to check in with  
6 the objecting beneficial owners and figure out if they do  
7 in fact object? And how do we protect whatever  
8 legitimate proxy rights those who truly want to object --  
9 and honor that view?

10 Katie, do you want to kick us off on that?

11 CHAIRMAN CLAYTON: Actually, David -- and maybe,  
12 Katie, you'll do this -- but for our investors at home  
13 who maybe don't know what NOBO/OBO is, would somebody  
14 just give a plain language, if it's possible,  
15 explanation?

16 MS. SEVCIK: Sure. Thank you. So I would say, just  
17 really at a high level, OBO is an objective beneficial  
18 shareholder who does not want their information to be  
19 given to the issuer. A non-objective beneficial investor  
20 would be an investor that doesn't care, that they are  
21 totally fine with their intermediary giving their  
22 information to the issuers.

23 And so you'll guess, looking at -- it's obviously no  
24 secret that issuers today have more and more of a  
25 responsibility to reach out to all of their investors, in

1 particular with the focus on corporate governance and the  
2 issuer wants to be able to tell their story.

3 And in some of the kind of investigative work that  
4 some of the issuers have done is trying to understand,  
5 again, how does a shareholder become an OBO or a NOBO,  
6 and do they really understand it? And some issuers, in  
7 some cases they may have asked other associations to do  
8 some research as well.

9 And there's a couple things. Once -- I think it was  
10 maybe ten years ago -- there was an effort by  
11 intermediaries, brokers and banks and issuers, and  
12 looking at the contacts. So I know there were comments  
13 made that in some cases, the default was to OBO.

14 And back about ten years ago, the vast majority of  
15 the contracts that we looked at as an industry did have  
16 that, in effect, that the default was of the disclosures,  
17 that the intermediary would not provide the information  
18 to the issuer.

19 So I think that's one of -- one thing from an  
20 issuer's perspective is: How do we go about now and  
21 rectify that? How do we go back and ask all the  
22 beneficial shareholders to say, "Do you really -- we have  
23 this need to reach out to you. You are investing in our  
24 company. We want to tell our story. Are you fine with  
25 that?" And we believe, from an issuer's perspective,

1 that the vast majority of the OBOs will switch over and  
2 become a NOBO. So I think that's one.

3 There was a period of time when, after this study  
4 group, in looking at the contracts -- then there was a  
5 period of time when the intermediaries changed, and they  
6 didn't default. Unfortunately, we're starting to see the  
7 defaulting come back again, and so we're starting to see  
8 some cases where that is.

9 I think, to again -- there have been various  
10 suggestions, suggestions of those that truly want to be  
11 an OBO, to have it in a nominee account and pay for that  
12 service to become an OBO. But it would be very  
13 interesting to see how many of those 60 percent of OBOs  
14 really want to be OBOs. The thought is it's less than  
15 even 5 percent.

16 Now, I think one other thing just to add for this:  
17 The issuers, again, they do have access to the NOBOs.  
18 It's very expensive. We've got -- there's one that  
19 ended up paying more than \$70 a name. That's what the  
20 cost was for that issuer to get a list of their top  
21 thousand NOBOs. So they were paying over \$70,000 to get  
22 that top list.

23 We know another issuer that wants to reach out to --  
24 or, excuse me, and when the issuers get this list,  
25 there's no email addresses. It's just name and street

1 address or name and P.O. address. So it's only postal  
2 mail that they can reach out.

3 So we do have other issuers that, on their own, have  
4 actually been trying at the time, during the annual  
5 meeting, have beneficial shareholders to sign up on their  
6 site to get a quarterly newsletter and trying to get,  
7 again, the email addresses so that issuers can reach out.

8 So, number one, it's obviously very expensive to get  
9 the NOBO list. And two, it's really time for us to re-  
10 look at that OBO/NOBO and really identify who wants to be  
11 an OBO, and another alternative for them to remain on  
12 this.

13 MR. FREDRICKSON: David?

14 MR. KATZ: I struggle a little bit with the  
15 premise that we've got to leave the OBO/NOBO system the  
16 way it is because I think if you look around the world,  
17 nobody else has used that system any more. There are  
18 ways to do it; the Commission could regulate through the  
19 use of low-cost or no-cost nominee accounts; if that was  
20 really what people's concern was.

21 I think most people don't understand it and don't  
22 understand the distinctions. But there's no reason why;  
23 the technology exists to have all this data easily  
24 available. There's no reason -- there's no incremental  
25 cost of \$70 a name to do it. It exists in a database.

1 And if we're trying to increase and enhance  
2 shareholder engagement, which I think everybody on this  
3 panel probably is somehow in favor of, figuring out ways  
4 to achieve low-cost communication on a regular basis as  
5 opposed to just around annual meetings makes a lot of  
6 sense.

7 And I think that by starting down that path, you  
8 will actually help issuers better understand who their  
9 investors are, investors perhaps understanding better who  
10 the issuer really is and what their goals are, and  
11 sparking some additional engagement and communication,  
12 which then carries over to the whole proxy process  
13 because you now have a database of information that  
14 allows people to communicate directly.

15 We can try some of these pilots that different  
16 people have talked about, and through blockchain or other  
17 technologies, frankly, we can use that so that when  
18 somebody trades their shares, that information can carry  
19 at a relatively low cost basis.

20 MR. FREDRICKSON: And so in the interests of time, I  
21 want to hear from you. But if you could keep it short,  
22 and then we'll move on. So Bruce, Larry, and Paul.

23 MR. GOLDFARB: The issue of outreach is one that is  
24 not just for the operating companies and the issuers  
25 we're talking about here. It's outreach for something

1 that the Division of Investment Management will also have  
2 to take up because there, you're talking about mutual  
3 funds, significant retail share ownership, and a lot of  
4 OBOs.

5 And the communication process, how do you reach  
6 OBOs, was the original question. And mailing alone is  
7 not going to be a sufficient way to reach people. Email  
8 alone is not necessarily a sufficient way to reach  
9 people. We have additional technology beyond phone  
10 calls, even, but when we reach people by phone, when we  
11 are able to email somebody directly with a significant  
12 message, you can get a response.

13 But that next stage -- if you eliminate these  
14 barriers, you're able to reach people with social media.  
15 You're able to reach people through their smartphone and  
16 get a response. That's where we should be moving.  
17 That's where we should move with the technology.

18 But we have to get beyond the distinction -- a false  
19 distinction, really -- of OBO and NOBO. The largest  
20 investors may be OBO, may be NOBO; they report their  
21 ownership on a quarterly basis, and then you have a basis  
22 through which to reach them.

23 So it's a big slug of the population for some  
24 issuers, a smaller for others. But it's a cost, and it  
25 needs to be fixed.

1 MR. CONOVER: So just a couple comments. I think  
2 this is one of the most misunderstood concepts I think we  
3 heard, just to start this conversation off with an  
4 explanation of it. So I think you're right; a lot of  
5 shareholders don't understand this.

6 However, if you look at the data and break it down,  
7 the largest percentage of OBOs is institutional  
8 investors. And it's really a privacy issue that's out  
9 there. And there's been a couple of comments around, do  
10 we charge fees for this? Do we do other things? But I  
11 think those are types of investors that are going to do  
12 whatever it takes to protect their proxy.

13 I will say engagement-wise, I think with corporate  
14 governance -- and we've seen that; I believe issuers have  
15 a lot of dialogue with institutional investors, so I  
16 believe there's means to reach that. When you look at  
17 the rest of the data with the retail investors, most are  
18 NOBO.

19 There's a common misconception with that. By rule,  
20 it's NOBO. By default, it's NOBO. We've looked at the  
21 data. There's been some studies out there; less than 13  
22 percent of shareholders are actually OBOs. And I guess  
23 my caution in trying not to make light of the situation  
24 is we've talked about refreshing these types of things.

25 Kind of be careful what we ask for because we've

1 regulation or a practice, but even with a NOBO list, I  
2 don't believe that an issuer can distribute proxy  
3 materials to non-objecting beneficial owners. That kind  
4 of talks to what I think is one of the structural  
5 barriers.

6 On OBOs, I had some views. I always thought that  
7 reforming NOBO/OBO and having a completely disclosed  
8 system was the right way to deliver proxy reform. After  
9 17 years of commenting periodically, I've begun to  
10 understand the importance of investor privacy.

11 And I don't believe investor privacy should stop us  
12 from reforming the system to make the plumbing work more  
13 effectively. I think that's something we need to build  
14 into the system. I would be personally prepared to  
15 sacrifice that in order to get a better system, but maybe  
16 we'll talk about that when we talk about technology.

17 MR. FREDRICKSON: Perfect segue again. So we've  
18 talked about new blockchain technology. It's not just  
19 for Bitcoin. There are some promising developments in  
20 the use of traceable shares.

21 And Ken, do you want to kick off this conversation?  
22

23 MR. BERTSCH: Sure. Thanks, David. So I agree with  
24 that. I think that there are investors who very much  
25 want privacy. That doesn't dictate a NOBO/OBO system, so

1 seen -- and we have the P&G proxy flight. I think there  
2 was 27 mailings that went out and all kinds of phone  
3 calls going out to customers. We had more customers  
4 calling us up saying, "Stop this. How do I stop this?  
5 How did my name get out?"

6 And when they found out there's opportunities to  
7 become OBOs, "Sign me up." So I think investors will  
8 engage where they -- when they want to. But I think we  
9 talk a lot about large share ownership. I think that's  
10 more on the institutional side and not on the retail  
11 side. And I think they're going to have a desire for  
12 proxy.

13 MR. FREDRICKSON: Paul, bring us home on this.

14 MR. CONN: Okay. I will be very quick.

15 The first is, I completely agree with Katie's  
16 comments about the quality of the NOBO list. It isn't  
17 really received in an actionable form. So that's one  
18 thing that certainly should be looked at. Email  
19 addresses are quite important for companies to be able to  
20 reach out to the non-objecting beneficial owners cost-  
21 effectively. That's the first point.

22 The second point, which I think is more important,  
23 is my understanding is companies can't use NOBO lists for  
24 proxy distribution purposes. So there's some, in my  
25 view, barrier there. I'm not sure whether it's a

1 Paul's comments and David's comments earlier.

2 In fact, I think that there are various  
3 technological possibilities to make the system much  
4 better. But there are reasons not only in entrenched  
5 interests, or intermediaries who may lose some of their  
6 position in this that will be obstacles to change.

7 But actually, pretty much all the stakeholders have  
8 something that potentially could be lost as we rearrange  
9 the chairs, including our group. So I was told last week  
10 by one of our members, "You cannot do anything that will  
11 endanger NOBO/OBO," because we really -- that's critical  
12 to us. So people are going to see a slippery slope in  
13 all sorts of ways.

14 But I think we need to grasp this now. Many experts  
15 say it's possible, or will be possible soon, to develop a  
16 technology-based proxy system that enables proxy  
17 materials to be distributed instantaneously to all  
18 eligible shareholders, and for votes to be counted  
19 quickly, accurately, reliably, fairly, and  
20 confidentially.

21 CII in 2010 suggested that the only real possibility  
22 for change in proxy plumbing was incremental change. So  
23 we have a different view now. We think that technical  
24 possibilities, particularly around blockchain, are such  
25 that we really should look at this. And the SEC needs to

1 lead on this, at least in thought leadership. And  
 2 clearly there's regulatory change that's involved here.  
 3 There needs to be real clarity on a number of  
 4 issues. We should start with principles in terms of what  
 5 needs to be protected and pursued. There needs to be a  
 6 lot of clarity around where is there supposed to be  
 7 market competition? Is there market competition?  
 8 Are the rules set up so that theirs is real  
 9 competition and the economic incentives are right? And  
 10 are there pieces of this, or is there a piece of this,  
 11 that's a natural monopoly? And if it is, it needs to be  
 12 treated as a utility and regulated appropriately, which  
 13 we really haven't done in the past.  
 14 The major block to this -- there are technological  
 15 choices to be made. But the institutional blocks are  
 16 particularly important to overcome. So we don't want to  
 17 put out there the solution. There are different routes  
 18 that could be taken. Our instinct is that a permission  
 19 blockchain technology may offer the best solution.  
 20 That doesn't mean not to look at a central ledger  
 21 not based on blockchain. To look at a true distributed  
 22 ledger approach that really maximizes the blockchain;  
 23 there are some arguments about there, but you don't  
 24 necessarily need a gatekeeper.  
 25 But our guess is a permission blockchain with a

1 gatekeeper is the most likely solution. It should  
 2 improve the system by reducing complexities of share  
 3 ownership that lead to all the voting anomalies. And by  
 4 the way, we've been talking about inaccuracies and things  
 5 that are sort of obviously wrong.  
 6 There are also a lot of compromises in the system  
 7 that we accept, such as the early record date. That  
 8 causes a huge disconnect. And most participants in the  
 9 system just say, "Well, that's the way it is," that 45-50  
 10 days before you set a record date.  
 11 There are big changes in positions between record  
 12 date and the annual meeting date. There are  
 13 opportunities for mischief-making. There are a lot of  
 14 problems with this, and we shouldn't just accept it. And  
 15 it's partly a question of technology. It's partly a  
 16 question of state law as well as federal regulation.  
 17 But blockchain technology that allows for traceable  
 18 shares, as Brian referred to, can safeguard privacy  
 19 interests but put beneficial owners in charge of their  
 20 votes. The current web of intermediaries creates too  
 21 many opacities, and the information can be impounded into  
 22 the blockchain.  
 23 It should enable routine and a reliable end-to-end  
 24 vote confirmation very easily and more sweeping, even,  
 25 than what the protocol that Broadridge and tabulators

1 worked on. It can enhance company ability to communicate  
 2 with shareholders while protecting privacy, potentially  
 3 rendering the OBO/NOBO system obsolete. And it should  
 4 offer substantial efficiencies over the current proxy  
 5 season. David referred to this.  
 6 There are very substantial cost savings in the long-  
 7 term in going to a new system, probably based on  
 8 blockchain. So that's a high-level answer.  
 9 MR. FREDRICKSON: Terrific. And so this isn't all  
 10 just pie-in-the-sky. There's some concrete examples. So  
 11 John, then Bob, if you could give a report on what you've  
 12 seen, but also a sense of, so what would be next? How do  
 13 we continue to explore this concept? And then we'll open  
 14 it up for discussion.  
 15 MR. ZECCA: Well, thank you. So I think I'd agree  
 16 with the comment earlier that a lot of countries are  
 17 moving ahead of the United States, sort of the back  
 18 office operations. And partially that maybe because they  
 19 are skipping a generation in technology or because they  
 20 have a unity of agreement in the path forward.  
 21 So NASDAQ's technology arm has had the opportunity  
 22 to work in two projects involving blockchain for  
 23 proxy voting, e-voting, basically.  
 24 One is in Estonia, which is more of a direct  
 25 ownership model, obviously a comparatively small country,

1 but they have national identity cards. There's a lot of  
 2 transparency to the system. The second is in South  
 3 Africa, with their CSD. And that model is a little more  
 4 like ours, with intermediaries.  
 5 So I think the first point is that the technology  
 6 can accommodate other systems. It doesn't have to drive  
 7 what system you adopt. If you want a very transparent  
 8 system where everybody knows who the beneficial owners  
 9 are, it can accommodate that. If you have a lot of  
 10 intermediaries that need to weigh in, if there are middle  
 11 steps, if there are nominee accounts, it can also  
 12 accommodate that.  
 13 So I think that the important thing to note is that  
 14 the technology works in either place. And you can have  
 15 it so that it includes not only the vote going back and  
 16 forth, but it can include the information that's being  
 17 provided by the issuer to the end investor.  
 18 So using the smart contract concept, essentially  
 19 it's a two-way street. I think that some of the things  
 20 we talked about today that are critical, you could see  
 21 use of that for more direct communication between the  
 22 issuer and the end investor.  
 23 I think in our experience, most issuers -- I can't  
 24 say it's universal, but most -- believe there probably  
 25 should be more direct communication, and it shouldn't

1 just happen around the annual meeting. It should be more  
2 of a push technology where, like people nowadays, if you  
3 want to look on your smartphone, you see 25 emails from a  
4 vendor that sort of knows, almost anticipates, what  
5 you're going to ask for.

6 I think most issuers would like to get closer to  
7 that, where they're able to send communications directly  
8 to their investors on a more regular basis. So this  
9 could accommodate that. Certainly the end-to-end vote  
10 monitoring is available.

11 These are permissioned private blockchain networks,  
12 so they're not public in the traditional sense with  
13 minors and things like that. But you get some of the  
14 same functionality and ability to scale up to include  
15 different participants.

16 So I think at a high level, that's the technology  
17 solution. Obviously in all these cases there's a need  
18 for some level of acceptance by all of the  
19 intermediaries. I think we do try to make that as simple  
20 as possible because essentially for the investor and for  
21 the intermediary, it's essentially a web-face tool that  
22 they use that then is added to the blockchain. So it's  
23 not as if everybody has to become a minor themselves in  
24 order to participate.

25 So I think that's kind of the structure. It's

1 moving a lot of the underlying, behind-the-scenes  
2 infrastructure into this immutable ledger, which I think  
3 is one of its key benefits.

4 MR. SCHIFELLITE: So we at Broadridge are making  
5 very significant investments in blockchain. I think  
6 you've heard of one of the initiatives that we have,  
7 which is outside of the U.S. with Bank Santander, where  
8 for the last couple of years we've done a pilot using  
9 blockchain, and in essence, taking the data and writing  
10 to a blockchain to prove that in fact it works.

11 What we need -- so we're very supportive of  
12 blockchain. We think there can be some benefits. Like  
13 everything else, the devil's in the details. We need to  
14 continue to work. We need to continue to get more  
15 participation. We've also done some pilots in the U.S.,  
16 I think five issuers and a couple of custodians. We want  
17 to do more. We want to learn more.

18 And we're going to continue to promote and try to  
19 get more participation because we definitely need  
20 participation from investors to participate. We need  
21 participation from issuers. And we need participation  
22 from banks and brokers. So we're going to stay very  
23 committed to and aggressive on that path to see if  
24 blockchain s bring more benefits.

25 I'd like to add one other thing because I'm always

1 afraid you're not going to call on me again.

2 (Laughter.)

3 MR. SCHIFELLITE: So if I could just add, some of  
4 the comments, and to the credit of the Commission and New  
5 York Stock Exchange, just four years ago after a three-  
6 year study there was a review that took place on the  
7 whole street process.

8 And their conclusion -- not my words, their words --  
9 it's filed; it's filed with the Commission -- is how well  
10 this process works. It's accurate. It's reliable. It's  
11 secure. Not our words; a significant number of issuers.  
12 It was all issuers on this panel.

13 They came out to our facilitate on Long Island, in  
14 Edgewood, New York. They did an incredible job of  
15 understanding the process, understanding the technology,  
16 talking through things. And they came to the conclusion.  
17 They've also commented on the reasonableness of the  
18 fees, and those are not brokerage fees; those are broker  
19 fees.

20 So I typically do this as well, which is I invite  
21 everybody to come to the facilitate and see what it takes  
22 to get this done, and the controls, and the audits, and  
23 all the things that take place to ensure that this  
24 process is accurate and reliable.

25 David, I'll even pick you up. We can go out. I

1 always joke, it's the gateway to the Hamptons, if that  
2 entices anybody. But there's a -- I mean, it is  
3 significant. We've had the opportunity to have  
4 Commissioners visit. It's so important to be educated  
5 about this process.

6 And yes, more needs to be done; I think we talked  
7 about some of those key steps that need to be done to  
8 improve upon the process.

9 MR. YU: So Alex, at the IAC meeting you were pretty  
10 vocal about the blockchain silver bullet and the myth  
11 around that. So perhaps you could provide the other side  
12 of the debate in terms of technology, blockchain, and  
13 what other options there are.

14 MR. LEBOW: Sure. I've been pigeonholed as a  
15 blockchain naysayer, which is not the case. It's not the  
16 case. There's no doubt the technology holds great  
17 promise for its potential application in this space.

18 I think the point is there's a range of varying  
19 degrees of severity of implementation, if you will.  
20 There's a spectrum. On the extreme end of the spectrum,  
21 you have the complete reconstruction of the equity  
22 capital markets infrastructure, with distributed ledger  
23 technology. And if you read Vice Chancellor Laster's  
24 great speech on this subject from 2016, which was a CII  
25 speech. This is what he's talking about.

1 He says there's a utopian vision of share ownership,  
2 where there's legal and beneficial ownership, for one,  
3 and there's straight-through accounting. And it's  
4 beautiful and efficient and low-cost and wonderful. And  
5 then on the other end of the spectrum, you have more like  
6 what we're seeing today, which is the introduction of  
7 certain layers of blockchain on top of the preexisting  
8 system. There's a certain veneer of blockchain on top of  
9 a broken system.

10 And along the spectrum, you have varying degrees of  
11 centralized control. And my view is that the more you  
12 move on that spectrum away from all-in reconstruction of  
13 the system towards layers of veneer, the fewer the  
14 benefits are. All right?

15 And more importantly, the less clear its advantages  
16 are over preexisting database technologies or much  
17 simpler solutions like reformation of the NOBO/OBO system  
18 and letting a market emerge so people can actually  
19 compete on what matters.

20 So the point is, if you're going to do it, you've  
21 got to go all-in, like all-in on blockchain, which is a  
22 tall order. And I think that's why I said beware the  
23 blockchain silver bullet because it would be a real shame  
24 to discard the solutions that are closer to our grasp in  
25 favor of blockchain and then fall short and wind up with

1 years we've been involved in setting the proxy fees. And  
2 in 2012 we convened, as Bob said, a group of issuers that  
3 represented a cross-section of the public company  
4 community and also market participants as well to review  
5 the proxy fee structure.

6 That rule set was filed with the SEC, and I will say  
7 we're in regular dialogue with our 2400 listed companies.  
8 And of all the issues that we hear about, we do hear  
9 about proxy fees from time to time, but it's a distant  
10 third to the other two topics that will be discussed  
11 today.

12 And as technology continues to make advances, we  
13 need to have these type of discussions to see how we can  
14 have more efficient and cost-effective solutions to  
15 public companies. And I think a lot of the folks on the  
16 stage here are the ones that are coming up with those  
17 ideas, whether it be Bob at Broadridge or some of the  
18 other panelists as well.

19 So that said, if we continue to hear increased  
20 demand from our issuers that there is a problem  
21 particularly around the fee structure, we will escalate  
22 that issue. And at that point we think, if appropriate  
23 then, to reconvene a group and at that point we can also  
24 ask the question whether or not there's another industry  
25 group that might be better suited to address these type

1 a system where you could have a single intermediary that  
2 can charge for access and extract rents, for example.

3 MR. YU: I see a lot of interest here. So actually,  
4 let me start with Chairman Clayton, who has a question.

5 CHAIRMAN CLAYTON: Well, I actually would like to  
6 just make some comments at the end, and wanted to make  
7 sure I reserve my time. I think Commissioner Roisman  
8 feels that way as well. So why don't we let people get  
9 it on the table, and then if we can chime in at the end,  
10 that would be great.

11 MR. YU: Of course. John, why don't you share your  
12 thoughts on this.

13 MR. TUTTLE: Sure. Well, actually, I also wanted to  
14 get my comments in before the end of the meeting. I know  
15 we've run a little bit long and we haven't had the  
16 opportunity to answer all the questions or address all  
17 the questions. But I wanted to make sure some of the  
18 views of the New York Stock Exchange were addressed while  
19 we're here.

20 Also, thank you very much for the leadership, as my  
21 fellow panelists have stated, in pulling this roundtable  
22 together. Like any private or public sector institution,  
23 it's important to see what works, what doesn't work, and  
24 how we can fix things going forward.

25 And for the New York Stock Exchange, for the past 80

1 of topics. So thank you.

2 MR. YU: Paul, how about a quick comment, and then  
3 we'll turn it back to the Chairman and Commissioner  
4 Roisman.

5 MR. CONN: Okay. Thank you for the opportunity to  
6 comment. I think the question was around blockchain.  
7 I'm with Alex. I am actually pro-blockchain. I think we  
8 need, as an industry, to decide what problems we're  
9 looking to solve first and what principles we want to  
10 embed in the system. The technology is almost a  
11 secondary question.

12 Now, blockchain does bring some unique attributes,  
13 which will allow us to do certain new things. And that's  
14 true. But I think we should not get lost and seduced by  
15 shiny new technology. That's the first point.

16 I think the core issue that really needs to be  
17 determined is how information around intermediated  
18 holdings is aggregated, and the decision that needs to be  
19 made is whether the -- or how far distribution of proxy  
20 materials needs to stay with intermediaries, in which  
21 case we will also need the New York Stock Exchange or the  
22 SEC to be in the middle to set the fees, or whether  
23 issuers actually should be entitled to know who owns them  
24 and communicate with them using very modern technologies  
25 where they determine who the service provider is. I

1 think that's the fundamental issue. Then the technology  
2 platform you use I think is secondary.

3 One final point: When we talk about blockchain, I  
4 think we need to be very clear whether we're talking  
5 about reforming the proxy system or whether we're talking  
6 about reforming the clearance and settlement system,  
7 which is a much bigger issue. And we shouldn't allow  
8 those two topics to get conflated, even though they're  
9 clearly linked to one another.

10 I truly believe most of these problems that we're  
11 talking about today are in the intermediated holding  
12 system, not in the registered side of the market. We  
13 know most of the shares are in the intermediated side of  
14 the market. So all of these discussions are hugely  
15 relevant.

16 But I think it really does need participants to come  
17 together. We are working -- in the UK, we're working 20  
18 markets around the world. So I'm not hugely familiar  
19 with Estonia. I'm deeply familiar with South Africa. In  
20 the UK, we're working with a global bank, Citibank, on a  
21 system just like this now, where actually custodians and  
22 registrars are coming together to have electronic  
23 communications between issuers and end investors.

24 And the end investors are actually quite happy to  
25 have their identity revealed to the issuer when the

1 communication comes through the system, and the system  
2 allows a vote confirmation to come back the other way.

3 The technology exists. We just need to agree on  
4 what the principles are. Thank you very much.

5 COMMISSIONER ROISMAN: So thank you very much for  
6 all the participants on this panel, and the questions. I  
7 found this discussion incredibly illuminating. I think  
8 the big takeaway is that this Rube Goldberg system works  
9 perfectly.

10 (Laughter.)

11 COMMISSIONER ROISMAN: But in reality, I think if we  
12 just take a step back, one of the things that gives me  
13 pause is if I'm an investor, I own shares, I want to be  
14 able to vote. And when I vote, I need to know that my  
15 vote's counted. And based on the discussion today, I  
16 could have a concern that either my vote was never  
17 counted, undercounted, or even overcounted.

18 So with those three possibilities -- or the fourth  
19 possibility is it was counted. So these are all concerns  
20 that I have. And what you guys are talking about are the  
21 intricate details of the process, which I think are  
22 critical. But as Professor Coates started, I think, the  
23 discussion today, if we were to start from scratch, we  
24 would not have the system we have today.

25 So what I would like to see is just the

1 recommendation from you guys on how to ultimately ensure  
2 that fundamental purpose of voting, which is if you have  
3 the right to vote, you exercise it, that vote is counted,  
4 and I leave it to you guys to give us suggestions. So  
5 thank you.

6 CHAIRMAN CLAYTON: I'm going to echo a lot of what  
7 Commissioner Roisman just said. I want to thank you for  
8 coming together today very much. And I'm going to give  
9 you my take-aways; I have them here.

10 But first, for the participants to come together is  
11 a necessary condition for solving the issues that we  
12 face. So hopefully this is not the last meeting of  
13 groups like this.

14 Goals: A more efficient and more certain end-to-end  
15 communication, two ways. As Commissioner Roisman said,  
16 the issuer knows they can communicate, or the dissident  
17 or the activist knows that they can communicate. And  
18 the shareholder knows that when they send their vote  
19 back, it's counted. Clearer and perhaps more timely end-  
20 to-end communication. Universal proxy is a proposal on  
21 the table.

22 Third, I just want to note this for people who are  
23 maybe watching and aren't focused on proxy but are  
24 focused on trading and other things. I do think we have  
25 to have respect for our intermediary system. It's not

1 just an intermediary system for ownership and voting, but  
2 it's an intermediary system for trading, and it adds to  
3 efficiencies in trading.

4 And lastly, I am heartened to hear about technology  
5 and the idea that technology should not drive the  
6 structure, but we outline these goals and find a  
7 technology that helps us address it.

8 So thank you very much, and again, thanks to the  
9 Staff for putting this together. Terrific, terrific  
10 morning.

11 MR. YU: And with that, just we'll close out this  
12 panel. And I just want to add my thanks as well as  
13 David's and the rest of the Staff for everybody coming  
14 in. It was definitely an interesting conversation, and  
15 it's heartening to see everybody from different  
16 viewpoints in the same room and so close together.

17 We're going to break for lunch. The next panel  
18 starts at 1:15. It'll be on shareholder proposals. We  
19 do recommend that you leave a little extra time to clear  
20 security since there will be, I'm sure, a line. So  
21 thanks again, and hope you enjoyed it.

22 (Whereupon, at 11:48 a.m., a luncheon recess was  
23 taken.)

24 AFTERNOON SESSION  
25 (1:17 p.m.)

1 PANEL TWO - SHAREHOLDER PROPOSALS:  
 2 EXPLORING EFFECTIVE SHAREHOLDER ENGAGEMENT  
 3 MS. BRIGHTWELL: All right. I think we'll go ahead  
 4 and get started for the afternoon. Welcome back to our  
 5 afternoon session of today's roundtable. Our next panel  
 6 will focus on shareholder engagement and the shareholder  
 7 proposal process.  
 8 And so I'll first introduce our panel quickly, go  
 9 over some logistics, and then we'll jump right into our  
 10 questions. So first we have Ray Cameron from Blackrock;  
 11 Ning Chiu, Davis Polk & Wardwell; Michael Garland, Office  
 12 of the Comptroller, New York City; Maria Ghazal, Business  
 13 Roundtable; Jonas Kron, Trillium Asset Management; Aisha  
 14 Mastagni, California State Retirement Teachers'  
 15 Retirement System; James McRitchie,  
 16 CorporateGovernance.net; Tom Quadman, U.S. Chamber of  
 17 Commerce Ctr for Capital Markets Competitiveness; Brandon  
 18 Rees, American Federation of Labor and Congress of  
 19 Industrial Organizations; and Dannette Smith;  
 20 UnitedHealth Group.  
 21 We also have Chairman Clayton and Commissioner  
 22 Peirce and Commissioner Roisman here with us as well. So  
 23 we'd like to welcome them back.  
 24 We're very fortunate to have this distinguished  
 25 Panel of Participants this afternoon, and so we're

1 looking for a robust dialogue.  
 2 During the panel, if you could make sure to press  
 3 your button when you're ready to speak. And then when  
 4 you're finished, if you wouldn't mind pressing the button  
 5 again to turn it off. If you'd like to respond to a  
 6 question or comment by one of your fellow panelists,  
 7 please turn your name tag, and we will recognize you for  
 8 that as well.  
 9 Finally, before we get started, I know Bill Hinman  
 10 gave the disclaimer this morning. But for the afternoon,  
 11 I'll go ahead and give it again: The views that we  
 12 express today are our own and they don't necessarily  
 13 represent that of the Commission or other members of the  
 14 Staff.  
 15 So like to get started. And Ray, I think we'll get  
 16 started with you. Over the past couple of years,  
 17 engagement with shareholders seems to have increased, and  
 18 so we wanted to talk about that because one of the ways  
 19 that people engage with shareholders is through  
 20 shareholder proposals.  
 21 And so could you talk a little bit about how you  
 22 engage with shareholders and how shareholder proposals  
 23 affect company and shareholder engagement?  
 24 MR. CAMERON: Sure. First of all, I'd like to thank  
 25 the Chairman and the Commissioners, and also the Staff,

1 for having me here today to represent Blackrock. This is  
 2 a very timely and very important conversation.  
 3 Let me start by saying that Blackrock's engagement  
 4 on material governance issues, including how companies  
 5 manage environmental and social aspects of their  
 6 businesses, does not begin or end with a vote on a  
 7 shareholder proposal. Our engagement first approach,  
 8 which entails year-round conversations with companies,  
 9 allows us to preempt issues that might be addressed in a  
 10 shareholder proposal during a proxy season.  
 11 The conversations with company management allow us  
 12 to tackle issues in realtime and not wait to address them  
 13 at the last moment. We believe in balancing the rights  
 14 of all shareholders and recognize that shareholder  
 15 proposals provide an important tool for investors to  
 16 express their views.  
 17 We prefer engagement, as we see shareholder  
 18 proposals as a tool often of last resort, an avenue for  
 19 accelerated change when needed. During our direct  
 20 engagements with companies, we address the issues covered  
 21 by many shareholder proposals that we believe to be  
 22 material to the long-term value of the company.  
 23 Where management demonstrates a willingness to  
 24 address the material issues raised, and where we believe  
 25 progress is being made, we will generally support the

1 company and vote against the shareholder proposal.  
 2 Now, sometimes shareholders will withdraw  
 3 proposals from company ballots that we might have  
 4 otherwise supported due to effective engagement of  
 5 conversations or engagement with companies. These  
 6 engagements may result in the company adopting  
 7 additional disclosures, similar to those that were solved  
 8 in a shareholder proposal.  
 9 We also vote against shareholder proposals that, in  
 10 our assessment, are too prescriptive or too narrowly  
 11 focused, or deal with issues that we consider to be  
 12 outside the purview of the board or the management team.  
 13  
 14 In addition, our carefully considered investment  
 15 stewardship priorities cover most, if not all, of the  
 16 topics raised in shareholder proposals. Those include  
 17 governance, strategy, purpose and culture, diversity, and  
 18 human capital.  
 19 Given these priorities, we are likely to discuss any  
 20 topic raised in a shareholder proposal. Having said  
 21 that, and in some instances, Blackrock supports  
 22 shareholder proposals on material, environmental, social,  
 23 or governance issues when we do not see demonstrated  
 24 commitment to address investor concerns or the company  
 25 has not made sufficient progress over a period of time.

1 So to be clear, Blackrock never makes social  
2 decisions with clients' money. Our top priority, our  
3 number one goal, is to maximize long-term value, economic  
4 value, for our clients. When we consider how to vote on  
5 a shareholder proposal, we do so with the lens toward the  
6 material nature of the specific issue or the specific  
7 question at hand.

8 Our interpretation of the gradual guideline in the  
9 number of shareholder proposals and levels of self-  
10 support for proposals of the past few years is that  
11 direct engagement is building mutual understanding  
12 between companies and long-term investors on emerging  
13 issues, particularly as it relates to governance  
14 proposals.

15 So in summary, Blackrock takes an engagement-first  
16 approach. And we find that even when we do not support  
17 shareholder proposals or some proposals, the  
18 conversations that we have with companies on related  
19 topics often lead to positive change without the use of  
20 what some might consider to be a blunt instrument.

21 MS. BRIGHTWELL: Okay. And following up on that,  
22 and Dannette, maybe you could kick us off on this, do you  
23 see the type and level of engagement -- does it differ  
24 with respect to different types of investors or how one  
25 might approach the engagement?

1 MS. SMITH: How we approach the engagement wouldn't  
2 differ depending upon the type of shareholder. But the  
3 types of engagement generally do differ based on types of  
4 shareholders. UnitedHealth Group fortunately is very  
5 heavily institutionally held, so retail, just general  
6 communications with shareholders, is less of an issue for  
7 us than some of our co-companies, who have real struggles  
8 with trying to get quorum for annual meeting and finding  
9 shareholders, some of the OBO/NOBO from the earlier  
10 panel.

11 The issue when it comes to shareholder proposals --  
12 and we have had the distinct pleasure of receiving  
13 shareholder proposals probably from the vast many of the  
14 institutional investors at this table -- is that with the  
15 institutional shareholders, it's much easier to engage  
16 with them on what their proposal is, what their interests  
17 are.

18 It's much more difficult to engage with the retail  
19 shareholders. Sometimes they won't engage at all, and if  
20 they will, it's typically only by email.

21 MS. BRIGHTWELL: And one of the things Bill touched  
22 on, Bill Hinman in his remarks this morning, talked about  
23 technology and how it's changed. And people are  
24 harnessing technology and social media. For other types  
25 of engagement, does anyone see that that is being

1 harnessed now and in different ways for shareholder  
2 engagement, or is that something that we maybe still need  
3 to look at?

4 MR. QUAADMAN: Tamara, if I can just weigh in for a  
5 second on the retail shareholder piece. In our letter  
6 that we submitted earlier this week, one of the things  
7 that we had put out there, and we've actually raised this  
8 going back to the 2010 concept release, is the possible  
9 use of new technologies such as client-directed voting  
10 that retail shareholders could use because we've seen  
11 retail shareholder rates drop precipitously over the  
12 decades.

13 So we think that there are some existing  
14 technologies that can be used, and I think we would  
15 strongly urge the Commission to look at them. And I  
16 think social media is something to look at. But we also  
17 think that client-directed voting might be another path  
18 to also help with that, and that's something we strongly  
19 urge the Commission to look at.

20 MS. BRIGHTWELL: Brandon, did you want to comment?

21 MR. REES: I wanted to jump in. I know we're  
22 speaking back to the previous panel's topic, but one  
23 thing that we noticed after the e-proxy notice and access  
24 rulemaking went through is that retail investor  
25 participation voting dropped dramatically because many

1 retail investors are either unable or unwilling to vote  
2 electronically, which is why we felt that electronic  
3 delivery should be opt-in as opposed to opt-out.

4 But I urge the Commission to look at the reasons for  
5 why retail investing voting has gone down. And there are  
6 limits to technology that we have to recognize, that some  
7 investors simply prefer to vote by paper.

8 MS. BRIGHTWELL: Brandon?

9 MR. REES: I just wanted to jump in here when we're  
10 talking about technology to point out that there are --  
11 even in our audience today there are people from SAY and  
12 other -- Your Stake. There's another organization called  
13 Shareholder Democracy.

14 I think one of the things that the SEC could do to  
15 promote retail shareholder voting is to publicize the --  
16 with regard to education portion of the SEC site, it's  
17 almost like consumer protection. It's really not  
18 emphasizing the shareholder's role as a share owner in  
19 the company and their responsibilities to vote.

20 And where can they find out information on how to  
21 vote? Where can they find -- there are 15 funds that now  
22 announce their votes in advance of meetings, but most  
23 shareholders don't know about that. If they knew about  
24 it, they could see those other shareholders are voting  
25 and they could try to assess -- that would help them

1 assess their own votes.

2 MS. BRIGHTWELL: We'll go to Dannette and then Ning.

3 MS. SMITH: So my comments now are just on my own as

4 a retail shareholder. I think there are some platforms

5 by brokers that make it very easy for a retail

6 shareholder to vote. I happen to hold my shares through

7 Fidelity, and when I log into their account, I can just

8 go to an easy click that shows me anything that I have to

9 vote on.

10 I can click through easily to the proxy if I want to

11 see it, or I can mark my choices right there. And it's

12 entered in, and I don't need a control number, so I'm not

13 in Darla's situation where she couldn't vote her P&G

14 shares. It's just right there as long as I have my

15 login.

16 And if there's something that the Commission could

17 do to encourage more brokers to have a system that is

18 that easy for shareholders to vote, I think it would be

19 well worth it.

20 MS. BRIGHTWELL: Ning?

21 MS. CHIU: Thank you very much for inviting me to be

22 on the non-boring panel.

23 (Laughter.)

24 MS. CHIU: I wanted to address the question you

25 raised about the use of social media in shareholder

1 proposals. It's challenging to do. We have seen in the

2 past, after notice of exempt solicitation maybe filed by

3 a proponent, the use of Twitter to then raise awareness

4 about the proposal and get people to vote.

5 And it's very complex for a company to weigh whether

6 they want to get into a battle in the Twittersphere,

7 which as we all know could be not a great thing to do.

8 And so companies are kind of reluctant to engage that

9 way, using the same social media platform that is being

10 used by proponents. So there's a little bit a reluctance

11 to use social media for that reason.

12 MS. BRIGHTWELL: And so then I guess the question

13 next would be: Should the Commission play a role in

14 facilitating meaningful engagement between companies and

15 their shareholders? And on this one I think I'll turn

16 first to Jonas and then to Maria to get your thoughts.

17 MR. KRON: Thank you very much for the opportunity,

18 and also to the Commissioners and the Staff for being

19 able to share Trillium Asset Management's point of view.

20 And I should say that that's a point of view that's

21 informed by our clients, who are about 10,000 different

22 clients, many of which are saving for their retirement,

23 and they are very much the mainstream investors that we

24 have been talking about numerous times today, and I think

25 the Mr. and Ms. 401(k) that we're concerned about.

1 I should also just say that this is also informed by

2 the fact that I sit on board of US SIF, the Forum for

3 Sustainable and Responsible Investing. That's our

4 membership association for organizations that integrate

5 environmental, social, and governance factors into the

6 process.

7 In terms of the question of: Should the Commission

8 help facilitate these interactions, I think Rule 14a does

9 a really good job of facilitating those interactions.

10 It's cost-effective. It's a cost-effective way to really

11 encourage private ordering.

12 And in some ways, it almost makes us longer-term

13 investors because we don't have to just sell the company.

14 We can invest our time and our energy to help it become

15 a better performer, and stick around and become actually

16 longer-term investors because of that.

17 The rule does a really good job of helping investors

18 communicate to the board and communicate to management.

19 But something I think we don't want to lose sight of here

20 is that it also helps shareholders communicate with other

21 shareholders. And I think that's something that

22 sometimes gets forgotten.

23 There was actually a comment put in by MFS in the

24 last day or so that I think really made this point well,

25 is that the shareholder proposal process allows investors

1 to understand what other investors are thinking, and

2 provide a feedback mechanism that can be really vitally

3 important to understanding the risks and the

4 opportunities for active or passive investors as they

5 make decision about valuation and whether to hold the

6 company or not.

7 The other piece that I think maybe gets lost in this

8 a little bit that really is facilitated by the rule is

9 I'm sure everybody here has read a shareholder proposal.

10 But my guess is most folks have not written a

11 shareholder proposal.

12 And the act of writing a shareholder proposal is

13 actually something I think that is really beneficial to

14 the communication process. There's all these issues out

15 there, and when you sit down to write a shareholder

16 proposal, you have to decide, what is the issue that

17 we're going to focus on? Why is it relevant to this

18 company?

19 And then I need to explain to the board -- I need to

20 be persuasive to the board -- why they should agree with

21 my position on this issue. I have to be persuasive to

22 the management, and I have to be persuasive to other

23 shareholders as well. All the while, I have to make sure

24 that I conform to the 13 different exclusions and make

25 sure I don't misstep there, and do it all in 500 words or

1 less.  
2 That is a really rigorous and demanding process that  
3 takes what could be a real cacophony that we see in  
4 Twitter and make it something that's actually very  
5 disciplined, very clear, and very efficient in  
6 communicating what the issue is and why it's important.

7 So I actually think that the Commission, through the  
8 rule as it stands right now, does an amazing job of  
9 facilitating that communication, and doesn't really  
10 require a whole lot to change. I think it really is a  
11 very well-functioning system.

12 MS. CHIU: Great. Thank you, Tamara. Thank you to  
13 the Chairman and the Commissioners for inviting us to  
14 participate in this important discussion.

15 So as you noted at the outset, I'm here on behalf of  
16 Business Roundtable, which is an association, the chief  
17 executive officers of America's leading companies. We  
18 believe that meaningful engagement with shareholders is a  
19 critical element of the operation of today's public  
20 company. The shareholder proposal process is an  
21 important part of this engagement.

22 And we do believe that the Commission can help  
23 facilitate meaningful engagement by ensuring that its  
24 rules and regulations promote a process that's  
25 productive, focused on materiality, and oriented toward

1 long-term value creation for all shareholders; and also  
2 ensure that your interpretations of the rules and  
3 regulations are consistently applied.

4 Shareholder proponents benefit when their proposals  
5 are included on a company's proxy statement because their  
6 proposals are then distributed to all shareholders for  
7 consideration and voting prior to the meeting. This  
8 means, though, that the company, and as a result all  
9 shareholders, including those not submitting the  
10 proposal, bear the related costs, including the costs of  
11 evaluating the proposals.

12 So we think the Commission could help facilitate  
13 more meaningful shareholder engagement by updating and  
14 reforming certain aspects of the current system. For  
15 example, we believe that the ownership thresholds for  
16 submitting proposals should be significantly raised so  
17 that all of those submitting proposals have a meaningful  
18 and measured ownership interest in the company.

19 But we acknowledge that determining a new threshold  
20 will be difficult. And we will support the SEC's efforts  
21 to do so. And so, as you're making this determination,  
22 possibly, ideas that could be considered include, among  
23 other things, perhaps tying the ownership to the length  
24 of the holding period and allowing reduced ownership  
25 requirements for long-term holders; tiering ownership

1 thresholds based on the size of the company; requiring a  
2 filing fee for shareholder proposals.

3 And we also believe that the current resubmission  
4 thresholds are too low, another area for improvement.  
5 They allow a small subset of shareholders or, frankly, a  
6 proxy advisory firm, to override indefinitely the express  
7 will of a substantial majority of shareholders.

8 So you also asked about the role the Commission can  
9 play without rulemaking. And we also recognize and  
10 appreciate the tremendous work the Staff puts into  
11 providing guidance on the shareholder proposal process,  
12 both with no-action letters and Staff legal bulletins.  
13 We do think the process could be improved with enhanced  
14 review and oversight, including at the Commission  
15 level, and we think that would provide greater  
16 consistency.

17 So we do think that all of these modifications and  
18 reforms will help facilitate more meaningful engagement  
19 between companies and their shareholders.

20 MS. BRIGHTWELL: Thank you.

21 Tom?

22 MR. QUAADMAN: And first I should have earlier  
23 thanked Chairman Clayton, the Commissioners, Bill Hinman,  
24 and the Corp Fin Staff for putting this together. We  
25 appreciate it.

1 In 2009, the Chamber issued corporate governance  
2 principles, and we had communications at the very heart  
3 of those principles. We thought, and still continue to  
4 think, that it is extremely important for management and  
5 directors to be in continuous communication with their  
6 investor base.

7 That is, we have to remember that management,  
8 directors, shareholders, are there for for a  
9 collaborative purpose, for the long-term value of a  
10 corporation, and that the business community has been  
11 very slow in engaging those discussions. I think that  
12 Blackrock and Vanguard have done a lot over the years to  
13 help facilitate that. I think the SEC should help  
14 facilitate that as well.

15 And we've talked a little bit about how there are  
16 different technologies that exist today that didn't exist  
17 ten years ago or were in their infancy that can also be  
18 used to help with that. However, I also want to raise  
19 that while that relationship amongst those three is  
20 collaborative, in the context of universal ballot, which  
21 was also raised in the last panel, what we sometimes have  
22 is at least a discussion of policy priorities that create  
23 an adversarial relationship.

24 So with that, some of the issues that we have raised  
25 before with universal ballot is that it doesn't treat

1 every shareholder equally. It can be viewed by certain  
2 courts, under their rulings, that it could be a form of  
3 coercive speech that can violate the First Amendment.  
4 And additionally, it can put into place relationships  
5 with dissident directors who may not have the same view  
6 of the corporation in the long term.

7 So I raise that in that we think it should be  
8 important for the Commission to follow policies that help  
9 facilitate the relationship amongst those three rather  
10 than pursuing policies that create a divisive,  
11 relationship, in which case communications actually  
12 become less important and more adversarial. So we think  
13 it should be done on a positive basis.

14 MS. BRIGHTWELL: Ning?

15 MS. CHIU: In terms of the question of whether the  
16 Commission should play a role, I'm sure some of you are  
17 hoping that somebody will say no, it's absolutely not  
18 your role. But it seems, with the 14a process, the rules  
19 already kind of embed you in this already.

20 There is a definitely tremendous amount of  
21 engagement going on. You've kind of stacked the panel  
22 with a group of people who are talking to companies, and  
23 who are very willing to do so. Not everyone is. I'm  
24 sure you've heard that.

25 A couple of ideas. One is, when it comes to a

1 action letter or at least made public in that forum, that  
2 might be useful to get the entire story about the  
3 proposal from start to finish.

4 MS. BRIGHTWELL: Jim?

5 MR. MCRITCHIE: I just want to say that I thought we  
6 solved all this with 14i with regard to these proxy-by-  
7 proxy. No one questions -- when I get a no-action letter  
8 from an outside attorney representing a company, I'm not  
9 questioning, are they really representing the company? I  
10 want to talk to the company. I don't want to talk to  
11 you.

12 I mean, I think that individual shareholders should  
13 have the same right to appoint an agent that companies  
14 have or that anyone else has in various aspects of their  
15 life. It is news to me that this is still a concern  
16 because I have never had any of the companies -- we filed  
17 200 proxies this year, among the three of us, the Main  
18 Street investors represented here at the table; thank you  
19 very much for inviting me -- and I have never heard from  
20 any of the companies where we have filed that since that  
21 SLB, that this is a problem. But yet I'm hearing today  
22 it still is.

23 MS. BRIGHTWELL: That was something that the Staff  
24 did try to put some guidance out in the Staff legal  
25 bulletin. And so we hoped that it did help to the extent

1 proposal being sent by a representative to so-called  
2 proposal by proxy, companies would really appreciate  
3 actually being able to speak to the beneficial owner.  
4 Ken said the votes belong to the beneficial owners.

5 Well, the proposal belongs to the beneficial owner,  
6 and companies would like to hear from the beneficial  
7 owner about why they thought the proposal is a good idea,  
8 what their feelings are about the company -- you know,  
9 the kind of engagement you would normally do with an  
10 investor. And knowing even the identity of the  
11 beneficial owner might be helpful to companies in terms  
12 of how they respond to the proposal and how they engage  
13 with other shareholders about it.

14 The other idea in terms of facilitating engagement  
15 without rulemaking, I believe, is if companies are trying  
16 to reach out more and more, and so are the investors. So  
17 there's a lot of discussion that goes on about a  
18 shareholder proposal before a no-action letter is sent to  
19 you.

20 So if in the context of that no-action letter there  
21 could be a discussion about the engagement that went on -  
22 - you know, we talked to the proponent of the proposal  
23 several times; we talked about XY, whatever the company  
24 thinks, and of course from the proponent side as well --  
25 if that could be considered in your evaluation of the no-

1 that there are still things that people have concerns  
2 about. We'd certainly be interested about those.

3 I want to turn to something that I think has been  
4 brought up by a couple people so far, and that is the  
5 costs and the benefits associated with shareholder  
6 proposals and the process. And so, maybe, Aeisha, if I  
7 could start with you to talk a little bit about what you  
8 see to be the costs and the benefits involved.

9 MS. MASTAGNI: Sure. Thank you. And thank you to  
10 the Commission for inviting me. I really appreciate it.

11 First off, I want to say that I think it's difficult  
12 to look or examine the cost-benefit analysis of just the  
13 shareholder proposals in isolation because similar to Mr.  
14 Cameron and his discussions about engagement, at CalSTRS,  
15 we see the shareholder proposal process as just one tool  
16 in our toolbox. And we think it's an important tool and  
17 important to preserve our right.

18 As an institution that does periodically submit  
19 shareholder proposals, we find it to be a relatively low-  
20 cost way to raise issues. And honestly, there are still  
21 some companies that are not prepared to engage with their  
22 shareholders.

23 For example, over six years, between 2010 and 2016,  
24 we engaged, or tried to engage, with 492 companies about  
25 majority vote for director elections. Within that 492

1 companies, only 60 proposals actually went to vote, and  
2 that was mainly because of the lack of engagement on the  
3 company's side. So I think it's important to preserve  
4 that right in the private ordering that Jonas brought up.

5 Similarly, I wanted to say that I think that the  
6 current 14a process balances the costs and benefits. I  
7 think some of the other panelists have brought up the  
8 idea that shareholders proposal -- that cost is borne by  
9 all of the shareholder base.

10 And I think within 14a, the substantive basis for  
11 exclusion, especially (i)(4), (i)(5), and (i)(7), ensure  
12 that these narrow self-interests are not borne by the  
13 broader shareholder base. I think that the Commission's  
14 involvement in that process, in the no-action,  
15 appropriately balances that.

16 MS. BRIGHTWELL: Chairman Clayton?

17 CHAIRMAN CLAYTON: Well, my colleagues and I have to  
18 go to another meeting. But I wanted to, before we do  
19 that, say thank you to all of the panelists here. I  
20 think everybody's being very nice and very candid.

21 (Laughter.)

22 CHAIRMAN CLAYTON: Appreciate that. But look, we  
23 don't bite, at least not here. So if you have specific  
24 suggests, we'd love to hear them. And thank you, and  
25 hope to be back after our meeting.

1 MS. BRIGHTWELL: Jonas, did you want to follow up?

2 MR. KRON: Yes. I just wanted to make one point in  
3 terms of costs and to put in context a little bit about  
4 what it is that we're talking about here.

5 Shareholder proposals, in terms of like how much  
6 energy is spent actually voting on shareholder proposals,  
7 I think Lysera put in a comment letter that said that  
8 less than or around 2 to 3 percent of what they cast  
9 ballots on are shareholder proposals. I think that  
10 number has been borne out in other analysis as well.

11 This is a very small sliver of what people need to  
12 make decisions about on a proxy ballot every year.

13 MS. BRIGHTWELL: Tom, did you want to follow up at  
14 all on that?

15 MR. QUAADMAN: Sure. Let me zoom out a little bit,  
16 and then let me talk about it in some greater detail.

17 One is, if you take a look at the tripartite mission  
18 of the SEC of investor protection, facilitating capital  
19 formation, and competition, I think if you look at it in  
20 that context, we're actually failing. We have less than  
21 half the public companies than we did 20 years ago. Our  
22 public capital markets are more inefficient today when  
23 compared to our private capital markets.

24 And additionally, retail investors don't have the  
25 same opportunities to be able to reap some of the

1 benefits of robust capital markets than they did 20 years  
2 ago. So I think from that broad point, we have to look  
3 at our public company system as not working.

4 That being said, I do think the shareholder proposal  
5 process is an important one. I think we have made some  
6 strides where I think it is better than it was let's say  
7 30 years ago. I think the relationship between directors  
8 and shareholders is much more of a balanced one than  
9 where it had been in the past, or certainly between  
10 shareholders and management.

11 But I do think that there are several problems that  
12 are out there. One, resubmission thresholds. We have a  
13 high number of, as we would call, zombie proposals, or  
14 those proposals that just continually kick around though  
15 they have low and declining support. They, number one,  
16 clog up the communication channels between shareholders  
17 and their companies. But it also imposes a cost on both  
18 the companies and their investors.

19 And at a certain point in time, if proposals are  
20 continually not getting the type of support or rather, in  
21 the alternative, that the same 80, 90 percent of  
22 shareholders are continually voting against them, at some  
23 point in time the majority, the will of the majority, has  
24 to count for something. And at some point in time, I  
25 think we have to realize that's exactly why companies are

1 no longer deciding to go public.

2 So I think that's one set of problems that, as  
3 submitted our resubmission threshold rulemaking petition  
4 several years ago, that would address some of those  
5 issues. I think if you take a look at the over 2,400  
6 shareholder proposals and the S&P 250 over the last 17  
7 years, about 28 or 29 percent of them would be considered  
8 to be zombie proposals.

9 Under our resubmission threshold petition, 27  
10 percent of those zombie proposals could still move  
11 forward. So the shareholder voice would still be there.  
12 Proxy advisory firms also play a role in this as well.  
13 I mean, we've talked a lot about it. We're going to have  
14 another panel that's going to talk a lot about it.

15 But even if you disregard the 2013 study that said  
16 that Glass Lewis and ISS control 38 percent of the vote,  
17 if you don't agree with that one, well, then there's a  
18 Manhattan Institute study that showed that ISS moves 15  
19 percent of the market.

20 That is enough to keep those zombie proposals going.  
21 And by the way, on average, ISS supports 80 percent of  
22 those shareholder proposals, and they support shareholder  
23 proposals generally eight times higher than the median  
24 shareholder.

25 So it is in their pecuniary self-interest to keep

1 those things going. So therefore, we think SLB 20 is  
 2 something that needs to be broadened. One is we think  
 3 there needs to be more transparency in terms of process  
 4 communications, which we've talked about before.  
 5 But even just going back to the 2013 roundtable,  
 6 which the SEC held, a very simple conflict of interest  
 7 such as shouldn't a proxy advisory firm have to disclose  
 8 if a shareholder proponent that they're making a  
 9 recommendation on, that they should have to disclose that  
 10 to the public? We think that they should.  
 11 Additionally, ISS in their letter for this  
 12 roundtable talked about themselves as a fiduciary. Yet  
 13 throughout the letter they then say, well, we're hands  
 14 off. We put that off to the investment advisor. If you  
 15 take a look at the 139 supplementary filings that were  
 16 made as a result of inaccuracies or mistakes, they  
 17 involve 107 companies over two years.  
 18 So that means that there's an error rate of  
 19 somewhere between 2, 2-1/2 percent on a very small sample  
 20 size, because not every company files a supplementary  
 21 briefing, so therefore, a fiduciary that has a 2, 2-1/2  
 22 percent failure rate that's probably higher? If you were  
 23 a lawyer or you dealt with trusts, you'd be in serious  
 24 trouble if you ever did that. And that's why we think  
 25 SLB-20 needs to be looked at.

1 Lastly, we do think -- we issued proposals earlier  
 2 this year on various shareholder proposal reforms.  
 3 Obviously, resubmission threshold is one. But 14o, we  
 4 believe that the reversal of the Whole Foods decision is  
 5 something that needs to be looked at. I think we've  
 6 gotten some mixed results out of that, but we think over  
 7 the course of time the SEC should look at that and see if  
 8 there are other tweaks that should be made.  
 9 We think that if a shareholder issues a proposal,  
 10 there needs to be transparency around that as to ensure  
 11 that they actually own the shares that they say they own,  
 12 and that they actually should also declare the interests  
 13 of what they're trying to accomplish and whether or not  
 14 they're doing it on behalf of another party. We think  
 15 that the relevancy rule should be strengthened, that  
 16 there should also be other rules strengthened regarding  
 17 personal grievance or misleading statements as well.  
 18 So we think if you make those changes, the system  
 19 comes back into balance. Shareholders still have a very  
 20 strong voice. And if shareholders see a problem,  
 21 management and directors should be able to direct the  
 22 company and their vision, and if they can't, then they  
 23 should be able to lose.  
 24 But that has to happen in a balanced system. And  
 25 the imbalance that we've had over the last 15 to 20 years

1 has made it an inhospitable atmosphere for a company to  
 2 go public.  
 3 MS. BRIGHTWELL: Thank you. I think -- well, we  
 4 will come back later on in the panel to the topic of  
 5 resubmission thresholds. But I want to hear quickly from  
 6 Brandon, Jim, and Jonas, and then we'll move on to  
 7 ownership thresholds.  
 8 MR. REES: Thank you for the opportunity to respond  
 9 to Tom. He put a lot out on the table, and I felt we  
 10 needed to clear the air a little bit with a fact-based  
 11 approach to our corporate governance system and the role  
 12 of shareholder proposals.  
 13 The facts are that the average publicly listed  
 14 company in the United States can expect to receive a  
 15 shareholder proposal once every 7.7 years, and the median  
 16 number of proposals received is one.  
 17 The idea that companies are not going public because  
 18 of the burdens of shareholder proposals is preposterous,  
 19 and frankly goes against the Chamber of Commerce and  
 20 Business Roundtable's position that they took in suing  
 21 the SEC to block proxy access, in which you effectively  
 22 endorsed the use of the shareholder proposal process for  
 23 private ordering around corporate governance matters.  
 24 And we've seen tremendous benefits over the decades  
 25 from shareholder proposals resulting in a private

1 ordering of companies along such things as proxy access,  
 2 annual director elections, independent directors, as well  
 3 as social and environmental issues -- climate change  
 4 disclosure, adoption of international human rights  
 5 standards.  
 6 These have all come through the private ordering  
 7 process. That's a humongous advantage of the American  
 8 corporate governance system that enfranchises small  
 9 investors, Main Street investors, retail investors to be  
 10 able to bring issues.  
 11 The marketplace for good ideas is not limited to  
 12 large institutional investors. The current system has  
 13 worked well going back to World War II in this country  
 14 for shareholders to be able to bring proposals forward on  
 15 corporate proxies. And it's hard for me to imagine how  
 16 any rulemaking in this area could satisfy a cost-benefit  
 17 analysis if it's going to result in disenfranchising  
 18 investors from being able to bring shareholder proposals.  
 19 MR. MCRITCHIE: Yes. I just wanted to respond to  
 20 Tom's comment to request to look back to SLB 14h, which  
 21 addressed the (i)(9) and the decisions around Whole  
 22 Foods, where they put forward a proposal in opposition of  
 23 mine, a proposal that could never be met. So he wants to  
 24 plug that hole.  
 25 I'd like to plug a hole, too, and that is

1 ratification. This past year in the no-action on AES, it  
2 basically said a company can -- we submit a proposal to  
3 change a threshold, to change anything, basically, the  
4 company can in and say, oh, instead of having your  
5 proposal on there, we'll put our proposal on there, and  
6 our proposal will ratify our existing procedures,  
7 process, thresholds, whatever.

8 I mean, that AES decision could virtually wipe out  
9 all proxy proposals. So I would like the SEC to take a  
10 relook at that.

11 MR. KRON: Just a couple more statistics to just put  
12 in perspective what it is that we're talking about here  
13 with shareholder proposals.

14 Again, to reiterate, less than 2 percent of --  
15 shareholder proposals make up less than 2 percent of the  
16 total number of ballot items. Less than 4 percent of  
17 shareholder proposals were filed at companies with under  
18 \$1 billion in market capitalization. Less than 9 percent  
19 of Russell 3000 companies that have had an IPO since 2004  
20 have received a shareholder proposal.

21 This is a very well-functioning system. The  
22 attention is going where it needs to go. The notion that  
23 it's being clogged up, that there are these zombies  
24 wandering around out there, zombies don't really exist.

25 (Laughter.)

1 MR. KRON: In real life or in shareholder work.

2 MS. BRIGHTWELL: Finish up with Maria.

3 MR. GHAZAL: Thank you. So just to follow up on  
4 many of the comments, including Jonas's last, that the  
5 system's working very well, so I'd just like to raise the  
6 issue that as you think about all of this, hopefully the  
7 Staff realizes that there is an important lack of  
8 deference that proxy advisory firms have indicated they  
9 may give to those process.

10 Glass Lewis has announced that in 2019, it may  
11 recommend a vote against members of a company's  
12 governance committee if the company actually uses the  
13 process and excludes shareholder proposals through a  
14 valid use of the no-action letter process. So that's  
15 something to just keep in mind as we say that  
16 everything's working well.

17 MS. BRIGHTWELL: Jim?

18 MR. MCRITCHIE: I just want to say, and that's for  
19 that ratification thing that could do away with all proxy  
20 -- all shareholder proposals. So thank God for Glass  
21 Lewis.

22 MR. MCNAIR: So we've already been able to, as part  
23 of talking about engagement, touch on a couple of areas  
24 for potential reform in 14a(8). And the first area that  
25 we'd like to talk about today is the ownership

1 thresholds.

2 And so as you know, for a shareholder to be eligible  
3 to submit a proposal and have that proposal included in a  
4 company's proxy materials, the shareholder must own  
5 \$2,000 or 1 percent of the company's securities that  
6 entitles that shareholder to vote on the matter.

7 And as we've already heard and talked about, one of  
8 the issues that has been discussed is whether that \$2,000  
9 threshold appropriately balances, on the one hand, a  
10 shareholder's ability to submit a proposal and have it  
11 included in a company's proxy for shareholders to  
12 consider, on the one hand; and on the other hand, the  
13 costs that are incurred both by companies and other  
14 shareholders who did not submit the proposal.

15 So with that in mind, the first question that we'd  
16 like to tee up is: If the Commission were to undertake  
17 to review the ownership threshold, what things should the  
18 Commission keep in minds? What things should it  
19 consider? And are there any guiding principles that  
20 should be adhered to? And Ning, we'll start off with  
21 you.

22 MS. CHIU: Thanks. Several thoughts on this. Given  
23 that the time that has gone by since the \$2,000 threshold  
24 was first adopted, there seems to be at least some  
25 consensus that should be reexamined. The trouble is that

1 nobody knows exactly what the right number is. I can  
2 acknowledge that.

3 There are a lot of ideas. One issue is that it's  
4 actually very hard to come up with a data set around  
5 which you can base a number or some kind of right  
6 threshold, balancing what Matt just said is important to  
7 balance.

8 CII did a great paper on resubmission thresholds,  
9 where you were able to see if it was this resubmission  
10 threshold, modest doubling, all those things, and it  
11 would knock out these proposals. So having that data set  
12 and the information on which to base an analysis was very  
13 helpful.

14 We don't quite have that data set for ownership  
15 thresholds because people don't have to tell companies  
16 exactly how much they own, just that they own at least  
17 \$2,000. If there was a way to figure out exactly how  
18 much they own, then we could do an impact analysis the  
19 same way, and that would be very helpful.

20 The second is in terms of IPO companies, one thought  
21 is to lengthen the time period for ownership to indicate  
22 long-term interest so that it's like a three-year holding  
23 period, and not only to show that it's a long-term  
24 shareholder, but it would give IPO companies a little bit  
25 of a break.

1 When you run through what it takes for a private  
2 company to be a public company with an IPO company, and  
3 you explain some of the requirements and what's regulated  
4 and what they would have to do in terms of resourcing up  
5 and prepare for, a lot of it makes sense.

6 You're now going to be taking in public shareholder  
7 money, so you need to tell them quarterly how you're  
8 doing. You need to tell them what your earnings are, you  
9 need to tell them whether your business strategy has  
10 changed, you need to tell them if you've sold the  
11 business -- all those things make sense. The annual  
12 meeting makes sense, electing your director.

13 When talking to them a little bit about shareholder  
14 proposals, it actually is a little bit of a hard thing to  
15 explain because the first reaction is, wait. A bunch of  
16 shareholders get to vote on how I run my business?

17 And while most of the time you can say, no, that's  
18 not exactly on a day-to-day basis, there are proposals  
19 that, for example, say, hire a banker to do an analysis  
20 of selling your strategic businesses that do get through,  
21 and yes, that could be on your proxy statement. So yes,  
22 there are some proposals that do kind of look like they  
23 tell you how to run your business.

24 So there is a little bit of a pause and all in terms  
25 of explaining that to a private company that's kind of

1 And then the last idea in terms of ownership  
2 threshold: Co-filers? Co-filers may be able to  
3 aggregate to a higher ownership threshold, if there is  
4 one, or having an idea of a higher ownership threshold if  
5 you are going to use co-filers because presumably that  
6 already means that many shares are bundling together.

7 So those are some of the considerations. There's  
8 many things you can do in this area. The data is quite  
9 limited in terms of trying to figure out the analysis.

10 MR. MCNAIR: Dannette and then Brandon.

11 MS. SMITH: I agree with what Ning said. I wanted  
12 to just offer a couple of extra data points.

13 I think as the Commission is considering this, one  
14 thing that they should think about is what is the purpose  
15 of the shareholder proposal rules? And if it is to give  
16 shareholders a voice, to suggest change that furthers the  
17 long-term health of the companies which they are invested  
18 in, then that's a very valid purpose, and there should be  
19 a very meaningful rule and I think most of the people on  
20 this panel wholeheartedly have that as their purpose.

21 If it is to allow a stakeholder who has no interest  
22 in the company to advocate for social change, that's a  
23 different purpose, and in many instances, that's what the  
24 shareholder proposal process has turned into. If you  
25 look at the threshold today, \$2,000 or 1 percent, we have

1 overwhelmed. So having a longer ownership period, not  
2 just to show that these are long-term shareholders but  
3 also to give IPO companies a little bit of a break, may  
4 be useful, recognizing that IPO companies don't always  
5 get a lot of proposals, but just at least in the context  
6 of that would be useful.

7 The third thing is we talked a little bit about  
8 proposal by proxy, and not so much about whether it's  
9 legitimate but about facilitating dialogue and engagement  
10 with the person whose shares are being used to send you  
11 this proposal.

12 Companies want to talk to the shareholder who's  
13 sending you the proposal. Sometimes companies find out  
14 that the shareholder sending you the proposal has an  
15 entirely different area of interest in mind than the  
16 actual topic of the proposal. So that is something that  
17 companies are interested in learning about from the  
18 shareholder whose shares have been used for the proposal.  
19 So a couple thoughts on that.

20 An ownership threshold: First of all, if you're  
21 doing proposal by proxy, you're stepping in the shoes of  
22 the shareholder, so a limit of one per proposal by proxy  
23 representative. One per company, just like a shareholder  
24 would have to. And perhaps a higher ownership threshold  
25 if you're going to use proposal by proxy.

1 962 million shares outstanding. One percent is 9 -- it's  
2 -- who knows if I do my math right, but 9.6 million  
3 shares. But \$2,000 is eight shares.

4 So that's a complete dichotomy. The 1 percent is  
5 meaningless. I'm not here advocating that 1 percent  
6 should be the threshold, but eight doesn't sound like you  
7 really have a long-term interest in the company.

8 And worthwhile happen when we get shareholder  
9 proposals, when we get them from shareholders like New  
10 York City or AFL-CIO, we have very meaningful discussions  
11 and our board takes them very seriously.

12 When we get shareholder proposals when the proponent  
13 will not engage with us and the person who shows up at  
14 the meeting asks for shareholders to vote for the  
15 cumulative voting and can't pronounce what they're  
16 looking for, don't know what they're supposed to do, it's  
17 an entirely different thing and it's very -- the board  
18 doesn't understand why they are being forced to spend  
19 time on these issues.

20 MR. REES: Thank you. If I could respond, I don't  
21 believe there is a consensus that any rulemaking is  
22 needed regarding the ownership requirements. The rule  
23 has always been accessible to small retail, Main Street  
24 investors since its origin in the 1950s.

25 The SEC adopted a \$1,000 ownership threshold in the

1 1980s. In 1997 when the SEC looked at this issue, they  
2 explicitly rejected substantially increasing the  
3 ownership threshold, recognizing that the purpose of the  
4 rule is to provide an avenue of communication for small  
5 investors. And so they only increased it to \$2,000 based  
6 on inflation. If you increased it for inflation since  
7 1998 to today, it would be approximately \$3,000.

8 Large institutional investors -- the Blackrocks and  
9 State Streets and Vanguards of the world -- do not need  
10 the shareholder proposal rule process to get the  
11 attention of management or the board of directors.  
12 There's not a corporate secretary or investor relations  
13 department in the country that would not return their  
14 call within 24 hours. The purpose of the shareholder  
15 proposal rule is to democratize the governance process so  
16 that even small investors can bring forward issues.

17 And regarding the goal of encouraging long-termism,  
18 that's obviously commendable. However, the shareholder  
19 proposal rule is not the place to do it. The ownership  
20 rule currently requires that shares be held for one year  
21 prior to submitting a proposal, and continue to be held  
22 through the annual meeting.

23 If anything, in recent years with increased  
24 portfolio turnover by active investors, the ownership  
25 requirement should be shortened, not lengthened. You

1 don't want to empower only index, passive index  
2 investors, to be able to use the shareholder proposal  
3 rule.

4 This is a rule that works well for all investors.  
5 Our shareholder democracy depends on it, having the free  
6 flow and exchange of ideas between small investors, not  
7 just between management and the investor base but between  
8 shareholders themselves so that they can idfy emerging  
9 issues.

10 And to get at the concerns Dannette was raising  
11 about it being used for social purposes, well, mainstream  
12 investors are increasingly recognizing that environmental  
13 and social issues are important drivers of value  
14 creation, and that you've seen a dramatic increase in  
15 shareholder support for proposals on environmental and  
16 social issues because they matter to company performance.  
17 Increasingly so.

18 So to say that we're going to dismiss the proponents  
19 of these proposals because we disagree with them is just  
20 not in the interests of our democratic system for  
21 shareholders. Thank you.

22 MR. MCNAIR: Jonas, Jim, and then Tom.

23 MR. KRON: So just a couple brief points. I think  
24 first is that part of the beauty of shareholder democracy  
25 is that the quality of one's idea doesn't depend on the

1 size of one's ownership. And I think that's really  
2 captured in making this accessible to smaller  
3 shareholders, where sometimes some of the best ideas can  
4 come from.

5 I think it's important to also remember that there's  
6 two different things happening here. There's the ability  
7 to file the shareholder proposal, and then there's  
8 getting the shareholder proposal in the proxy.

9 To actually file a shareholder proposal, I only have  
10 to hold one share, and I have to hold it about three or  
11 four months before the annual meeting. So like for  
12 Verizon, for example, if I wanted to just file a  
13 shareholder proposal, I could buy a share on February 1,  
14 2019, and file a shareholder proposal the next day. The  
15 question is whether you can get onto the proxy ballot.

16 Now, if anything, the amount of time should be less  
17 because as a shareholder, state law recognizes that I  
18 have an important contribution to make in the corporate  
19 governance process the moment I own those shares, and if  
20 I own those shares on the record date, I get a vote.

21 But having to wait a year before filing is actually  
22 quite burdensome. It actually adds quite a bit. And I  
23 realize that we have to make accommodations. We have to  
24 be reasonable. We have to find that balance point that  
25 we're talking about, and that maybe one year is that

1 balance point.

2 The last point I guess I would just make is that I  
3 think the former head of Corp Fin maybe put it most  
4 succinctly in trying to decide -- Keith Higgins -- what  
5 the dollar amount of the holding should be. And he said  
6 really it's just going to be a fool's errand trying to  
7 figure it out, and it's going to seem arbitrary and  
8 result-driven no matter what you do.

9 And that's why it's intended to just be at a low  
10 level. It's supposed to demonstrate some skin in the  
11 game, and to be honest, for some shareholders, \$2,000 is  
12 skin in the game. We all know the value of compounding  
13 interest, and if you buy shares, buy \$3,000 worth of  
14 shares and you're 25 years old, you're going to be a  
15 long-term investor, that's going to grow and grow. But  
16 at the beginning, you're going to have a very small  
17 ownership.

18 MR. MCRITCHIE: I just wanted to pt out that this  
19 complaint goes back -- the complaint of the low threshold  
20 -- I guess goes back a long ways, back in -- there didn't  
21 use to be any threshold. And a study of 286 shareholder  
22 proposals submitted between 1944 and 1951 found that 48  
23 percent were submitted by the Gilbert brothers.

24 So back then there were gadfly investors with small  
25 share holdings, and if it wasn't for them, we wouldn't

1 have the right to file proxy proposals. We wouldn't have  
 2 disclosure -- or a vote on auditors. We wouldn't have  
 3 disclosure of executive pay. We'd have even fewer women  
 4 on boards because of Wilma Soss and other folks.  
 5 And we may have small ownership in companies, but  
 6 typically 50 proposals of ours that didn't make it to the  
 7 proxy last year, more than half of those we reached  
 8 agreements with companies. Of 150 that did go to the  
 9 proxy, we got fairly high votes, like we got 64 percent,  
 10 on average -- on a supermajority provision, which is one  
 11 that we will be pushing again this year; 40 percent on  
 12 special meeting proposals; 42 percent on written consent.  
 13 So we get fairly high votes. I just want to point that  
 14 out.  
 15 MR. QUAADMAN: Jim, I didn't realize you weren't the  
 16 first gadfly.  
 17 (Laughter.)  
 18 MR. QUAADMAN: No. We think that retail  
 19 shareholders should have a voice. When I mentioned  
 20 earlier -- when I discussed universal ballot and I said  
 21 that there was an innate quality of how shareholders are  
 22 tted under universal ballot, it's because retail  
 23 shareholders are not given access to the universal ballot  
 24 or may not have to be given access to the universal  
 25 ballot.

1 So we can quibble about the \$2,000 threshold. Maybe  
 2 it should be indexed for inflation. We should look at  
 3 that. There should be some form of a period of holding  
 4 time so that we know that retail shareholders are in it  
 5 for the long-term value of a company, they're just not  
 6 trying to use the company's shareholder process as a  
 7 hobbyhorse.  
 8 As I mentioned earlier, we also believe that the  
 9 Commission should move forward with a rule that would  
 10 also have that shareholder transparently disclose what  
 11 their ownership stake is, and that would be verified;  
 12 also, that what the interest is that they're looking to  
 13 accomplish, which gets to Dannette's point -- they have  
 14 to be able to articulate exactly what they're looking to  
 15 accomplish; and then also, if they're doing this on their  
 16 own or on somebody else's behalf.  
 17 The other thing I would just say, too, about the  
 18 issue about social proposals, they're now making up about  
 19 50 percent of shareholder proposals that are issued, and  
 20 they never pass. So I think that's something, too, where  
 21 we need to take a look at it where -- that system can  
 22 also come out of balance.  
 23 I think if we strike a balance, then yes, retail  
 24 shareholders should have that voice and should be able to  
 25 articulate it on issues of importance to the company.

1 But if the shareholder process is just going to be  
 2 another form of political speech, then I think that's  
 3 something we need to look at much, much more closely in a  
 4 much different way.  
 5 MS. BRIGHTWELL: Tom, on the point that you were  
 6 making about the transparency about the ownership stake  
 7 and the purpose, is that something -- is the intent that  
 8 that would be disclosure to the company, or would that be  
 9 disclosure within the company's proxy statement as well?  
 10 MR. QUAADMAN: We would be open to exploring it both  
 11 ways because we think that's something that other  
 12 shareholders may want to know. And I think for  
 13 consistency purposes, if we're going to be -- if we're  
 14 call for more transparency around proxy advisory firms,  
 15 as we are, there needs to be more transparency around the  
 16 shareholder process as well, and that if retail  
 17 shareholders are going to issue proposals, there should  
 18 be transparency so that people know exactly what they're  
 19 dealing with.  
 20 MS. BRIGHTWELL: Maria, did you want to add  
 21 something?  
 22 MS. GHAZAL: Just that the Business Roundtable  
 23 agrees. And that's in our comments as well.  
 24 MR. KRON: Just one quick comment. What's actually  
 25 interesting is that the companies right now aren't

1 required to include the name of the filer in the proxy.  
 2 And many of them don't. So if there's a demand for  
 3 transparency, the companies are fully within their power  
 4 to do this, but they're not doing it.  
 5 They just put the proposal up there and make no  
 6 mention of who it is that's filing it. If there's really  
 7 a demand for that, I would expect that they would all be  
 8 doing that.  
 9 MS. BRIGHTWELL: Dannette?  
 10 MS. SMITH: I agree that the name of the shareholder  
 11 proponent should be in the filing. And sometimes it's  
 12 not that easy to figure out who it is or how they should  
 13 be portrayed. So having some clear instructions around  
 14 who the proponent is, how many shares that they hold, and  
 15 having both of those in the proxy I think is good for all  
 16 parties.  
 17 MS. BRIGHTWELL: Okay. So that was a good  
 18 discussion. So we'll turn to our next topic, which I'm  
 19 not sure is going to be any easier than that one, but  
 20 it's the resubmission thresholds.  
 21 And the current rules allow a company to exclude a  
 22 proposal that deals with substantially the same subject  
 23 matter as a proposal that was previously included in the  
 24 proxy statement if certain threshold are met. And those  
 25 thresholds currently are 3, 6, and 10 percent if they're

1 voted on once, twice, or three times or more within the  
2 preceding five years.

3 And there's been a lot of discussion about whether  
4 those are the right percentages and whether they should  
5 be increased or changed. And so I wanted to start off  
6 just asking the group, and Mike, maybe you can kick us  
7 off: Should those resubmission thresholds be revisited?

8 And what would be the potential advantages or not of  
9 doing that?

10 MR. GARLAND: No.

11 (Laughter.)

12 MR. GARLAND: No. So I want to thank the  
13 Commissioners' and Corp Fin Staff and Director Hinman for  
14 inviting me.

15 So the New York City Pension Funds are strongly  
16 supportive of the process. We vote for about 80 percent  
17 of shareholder proposals. We have a very large and broad  
18 portfolio. We have also probably filed more -- I believe  
19 filed more shareholder proposals over the last 30 years  
20 than any other institutional investor in the world.

21 I think our experience is instructive for this  
22 discussion. We have two signature initiatives that I  
23 think we're very proud of. The most recent is fresh in  
24 people's mind, and that's proxy access. The predecessor  
25 to that was sexual nondiscrimination proposals.

1 Each of these got off the ground after an  
2 unfavorable no-action decision from the SEC, the Whole  
3 Foods decision. Today we have over 540 companies in the  
4 U.S. that have proxy access. Over 70 percent of the S&P  
5 500. Had the Whole Foods decision not been reversed,  
6 that would not have happened today. And the SEC's own  
7 Staff has found that those proposals added value to the  
8 market and to those companies the received the proposal.

9 The other proposal, on nondiscrimination, in the  
10 early 1990s Cracker Barrel fired some employees  
11 specifically because they were gay. The New York City  
12 filed a proposal to prohibit workplace discrimination  
13 based on sexual orientation, at that time sexual  
14 orientation and subsequently morphed into gender identity  
15 as well.

16 The SEC excluded that proposal as ordinary business.  
17 NYCER is one of our five funds. Sued the SEC in federal  
18 court, and it wouldn't be the first time we've gone into  
19 courts to defend our rights, including on this proposal.

20 And we prevailed in a lower. It was ultimately  
21 overturned, I believe, on appeal by the SEC.

22 So that proposal -- the company did allow it to go  
23 to vote in 1993 when it received about roughly 14 percent  
24 of the vote. Ten years later, the votes were still under  
25 10 percent, on average, on that proposal. Five years

1 later, we were no-actioned at Apache Corporation and went  
2 into state court to challenge that no-action decision.

3 And flash forward to 2011. That proposal received  
4 over 50 percent support at KBR. And today, similar to  
5 proxy access, it's essentially a market standard that we  
6 believe has served the companies and their shareholders  
7 well.

8 It's also the kind of proposal that has been  
9 attacked as being disconnected from shareholder value.  
10 People talk about social and political proposals. We  
11 think all companies should cast a wide net for the best  
12 and the brightest.

13 I would note that one of our largest portfolio  
14 companies by far, one of the most valuable corporations  
15 in the world, is led by an out gay man, and that I don't  
16 think any of our portfolios -- that's Apple -- should be  
17 denied the opportunity to hire, retain, and promote the  
18 next Tim Cook.

19 So a couple other quick comments about this process.

20 I think it's important to understand that this process  
21 is very issuer-friendly. Issuers get unlimited space in  
22 the proxy statement to oppose proposals. They also get  
23 access to preliminary vote tallies. They actually get to  
24 put their finger on the scale if the vote's not going the  
25 way they would like it.

1 They can expend additional resources to solicit more  
2 votes, and proponents have no window into those numbers.

3 I would encourage the SEC to require disclosure of the  
4 preliminary vote tallies. This is something that the  
5 Investor Advisory Committee has also recommended, I  
6 believe.

7 MS. BRIGHTWELL: And so --

8 MR. GARLAND: I'm sorry. The point being that -- my  
9 point with the section on discrimination: It takes a  
10 while for investors to socialize issues. It's a matter  
11 of investor education. Things get easier as more and  
12 more companies adopt. It's easier to make the case to  
13 additional companies.

14 The objective is not -- of a proposal is an  
15 invitation to engage. The objective is not to go to a  
16 vote. The objective is ultimately to withdraw the  
17 proposal.

18 MS. BRIGHTWELL: Jonas, did you want to follow up?

19 MR. KRON: Yes. Just a -- it seems like now is a  
20 good time to dig into the zombie question.

21 So there's this notion that theoretically, under the  
22 rule, that a shareholder proposal could live on for  
23 decades. And the fact of the matter is that two-thirds  
24 of shareholder proposals don't even come back for a  
25 second year.

1 And those shareholder proposals that do sort of  
 2 linger in the teens, for example, you can pretty much  
 3 count on one hand and a foot -- unless you're a zombie,  
 4 in which case you have no fingers and no foot.  
 5 (Laughter.)  
 6 MR. KRON: Those that linger in the 20s, it's maybe  
 7 -- if you count environmental, social, and governance  
 8 factors, all of that, is probably about three dozen over  
 9 the last eight years or so actually qualify in that  
 10 regard.  
 11 And then there's a little hand-waving that goes on  
 12 here. The question is, well, what are those investor  
 13 proposals about? Like what is it that's so terrible  
 14 about having these issues on the ballot? Are they some  
 15 little narrow political interest that nobody is taking an  
 16 interest in or isn't important?  
 17 I can only think of two examples of shareholder  
 18 proposals that lived on for a decade on the ballot. One  
 19 of them was at Exxon, and that was actually an LGBT  
 20 nondiscrimination proposal that was filed by -- New York  
 21 City filed it for a while; Trillium filed it for a while;  
 22 and New York State filed it for a while.  
 23 And that was on there for a decade. And Exxon sat  
 24 there year after year with shareholder proposals getting  
 25 up into the 30s. Sometimes it would drop down to the

1 (i)(4), (i)(5), (i)(7), those will keep it out. And most  
 2 proposals that really are fringe also aren't even going  
 3 to get over even 3, 6, or 10.  
 4 MS. BRIGHTWELL: Tom and then Jim.  
 5 MR. QUADMAN: So I would say yes, we do support it.  
 6 Surprise.  
 7 Look, I think -- let's take a look at the rule. The  
 8 rule was imposed in 1954. Right? So 1954 is a  
 9 significant year, number one. That was the year of the  
 10 New York Central proxy fight. So that was the first time  
 11 you had a very serious proxy fight, what we would  
 12 recognize.  
 13 And if you look at where we are today, it's a much  
 14 different world. We have many different shareholder  
 15 proposals per company. We have -- some proposals were  
 16 mentioned, but there are companies who are members that  
 17 have had proposals kicking around for 11, 9, 18 years, et  
 18 cetera.  
 19 The other thing about 1954 is that the investor base  
 20 of a public company is the exact opposite of what it is  
 21 today. The percentages that we have for institutional  
 22 investors were retail investors back in 1954, and  
 23 shareholder proposals were used exceedingly in a very  
 24 rare way.  
 25 So I think we need to look at how those proposals

1 20s. But it moved in that range. All the companies  
 2 around them started adopting LGBT nondiscrimination  
 3 policies, and eventually Exxon did it.  
 4 And the reason they did it, and the reason all these  
 5 companies did it, is because we know that companies that  
 6 are LGBT-friendly and inclusive, they actually outperform  
 7 their peers that aren't. It's good business at that  
 8 point.  
 9 The other example that I can think of is actually at  
 10 Home Depot, which was an EEO-1 proposal, focused on  
 11 gender and racial discrimination. Trillium was also a  
 12 filer of that for a period of time as well. That  
 13 proposal actually came out of discrimination lawsuits  
 14 that were filed against Home Depot quite a long time ago,  
 15 and that proposal, yes, it did sit there on the ballot  
 16 for many years, asking the company to disclose -- it's  
 17 not actually a very big deal, it's simply asking them to  
 18 disclose, what is their employment breakdown by gender,  
 19 race, and ethnicity?  
 20 That proposal this past year -- it took a long time,  
 21 but it just got 48 percent of the vote. I'm hazarding a  
 22 guess that when it comes back next year, it's actually  
 23 going to get a majority vote. These things do take time,  
 24 and these are not fringe issues.  
 25 If it's a fringe issue, like Aeisha was saying,

1 are being used today, which is very often. We do have  
 2 proposals that are kicking around for a very long time.  
 3 They take up a lot of time and effort from companies.  
 4 And the other two issues are, A, that if a  
 5 significant portion, a supermajority, are continually  
 6 voting against a proposal; there comes a certain point  
 7 of, why not just take a time out? Because even if you do  
 8 take a time out and you're talking about an issue that is  
 9 growing, it'll continue to grow. So it's not as if a  
 10 shareholder is going to lose their right to talk about  
 11 that issue for all time. So I think that's something  
 12 that we really need to take a very close eye on.  
 13 Additionally, as I mentioned, even if you take, at a  
 14 minimum, the 15 percent bump with ISS and ISS supporting  
 15 80 percent of these zombie proposals, that means they're  
 16 going to be kicking around. They're going to be above  
 17 that 10 percent rate.  
 18 So if we think about it in those terms, there are  
 19 mechanisms that'll keep those proposals going because,  
 20 again, for a proxy advisory firm to have to make a  
 21 recommendation on a proposal every year and for their  
 22 consulting service to have to consult to the company on  
 23 that proposal every year, they're going to make money off  
 24 of it. It is in their pecuniary self-interest to do so.  
 25 But also let's think about it in this way, and it

1 goes back to facts that we have less than half the public  
2 companies than we did 20 years ago. Right? That  
3 directors today are being forced to deal with these  
4 issues year after year.

5 They're dealing with shareholder proposals in ways  
6 that they haven't before. They're dealing with --  
7 depending on the industry, they're becoming regulatory  
8 compliance officers to some degree, depending on what the  
9 industry is. Yet look at what's facing companies:  
10 disruptive change on a basis that we haven't seen since  
11 the industrial revolution, yet they're not allowed to  
12 deal with the long-term strategies of a company.

13 So if we want to have them deal with shareholder  
14 proposals, okay. But shouldn't they be dealing with the  
15 long-term strategy of a company knowing that this  
16 disruption is coming? Or furthermore, that we're seeing  
17 a reordering of the world economic order on a scale we  
18 haven't seen since the end of World War II. Why  
19 shouldn't American companies be planning for their  
20 competitiveness in that new changing order?

21 But if they're having to deal with these issues year  
22 in and year out, guess what? We're not creating  
23 shareholder value. And if they can't deal with those  
24 issues in a strategic way, they're not going to be  
25 around. And that's why companies are deciding they would

1 rather stay private because they can deal with those  
2 issues and that transformative change in a much more  
3 logical way for the benefit of the company.

4 MS. BRIGHTWELL: Brandon?

5 MR. REES: Thank you. Well, I can respond to Tom.  
6 Tom said it's a different world, and it is a different  
7 world in many ways. Most newly publicly listed  
8 companies, IPO companies in this country, have adopted  
9 dual class stock as a voting structure that gives company  
10 insiders control disproportionate to their ownership of  
11 the company.

12 What the means is that shareholder proposals at  
13 those companies are much less likely to be able to clear  
14 the 3, 6, and 10 percent hurdle. So if the SEC raises  
15 the resubmission threshold, you're depriving Class A  
16 holders, the public investors in those companies, of the  
17 opportunity to use the shareholder proposal rule to  
18 encourage corporate governance improvements.

19 And again, I have to rebut Tom's assertion that the  
20 decline in publicly listed companies in this country has  
21 anything to do with the shareholder proposal process. I  
22 think that's simply a preposterous notion. The reason  
23 why there are fewer publicly listed companies today is  
24 because of the growth of private equity combined with  
25 increased M&A activity. So companies that would have

1 gone public a decade or two decades ago now have been  
2 acquired by other larger rivals, particular the FANG  
3 stock companies.

4 So it's a red herring to raise up the fact that  
5 there are fewer publicly traded companies today has  
6 anything to do with the shareholder proposal rule. And  
7 if you look at the total public company market valuation  
8 in the United States as a percentage of GDP, it's never  
9 been higher.

10 Our public markets are working exceptionally well to  
11 allocate capital. And for shareholders, it's important  
12 for them to also participate in the discussion of the  
13 company strategy. And that's where the shareholder  
14 proposal rule comes into place, by allowing them to  
15 address environmental, social, and governance issues that  
16 have an impact on long-term shareholder value.

17 MS. BRIGHTWELL: Jim?

18 MR. MCRITCHIE: Almost the only time a company drops  
19 out of my portfolio is when it gets bought out by another  
20 company, and that's what's happening. That's why we have  
21 fewer companies.

22 I wanted to point out that, going off of Brandon's  
23 discussion, especially with regard to these companies  
24 where founders have ten times the votes of others, John  
25 Chevedden and I have partnered with Northstar at Facebook

1 and Google and perhaps some other companies for several  
2 years, asking to address that ten to one vote ratio.

3 And although we get votes, say, around 20 percent,  
4 that has the danger of being kicked off if John gets his  
5 way here. But 20 percent represents 80 percent of Main  
6 Street investors and institutional investors who believe  
7 that this disproportionate vote is really a concern.

8 And we are learning we don't have everything straight.  
9 We'll evolve this proposal. So this year, because of the  
10 work of the Council of Institutional Investors, we'll  
11 submit a proposal that asks them to phase it out over  
12 seven years.

13 So I think it's very important that we maintain the  
14 thresholds as they are. We can certainly see through  
15 LGBT rights that this was a very small, fractional  
16 portion of the population that support any rights at all  
17 for those people. But now everyone supports it.

18 So it just -- it takes a long time to gather, and  
19 then all of a sudden it happens.

20 MS. BRIGHTWELL: Aeisha?

21 MS. MASTAGNI: Thank you. I just wanted to go back  
22 to the beginning about why we even are having this panel  
23 today. We're talking about the eligibility requirements.

24 We're talking about the ownership thresholds. But are  
25 we trying to create a solution to a problem that doesn't

1 exist?

2 And I think Jonas brought it up that for

3 institutional investors, we vote on -- maybe 2 to 3

4 percent of the things we vote on is shareholder

5 proposals. And this idea that there's all these

6 proposals that linger in this 15 to 20 percent range --

7 maybe there's a couple examples, but the facts just don't

8 bear the case on that.

9 So I just want to propose that this is a system that

10 works. There are appropriate balances for both the

11 issuers and the investors. And I also want to

12 acknowledge that I think that the SEC and the Commission

13 itself and Staff have a finite number of resources, and

14 do we want to spend those resources on an issue like the

15 shareholder proposal process? Or should we be spending

16 it on what the last panel was about, which is about

17 ensuring that proxy plumbing process.

18 So I just want to propose that.

19 MS. BRIGHTWELL: Maria and then Ning.

20 MS. GHAZAL: Thank you. So to answer the question,

21 we do believe that, at a minimum, the threshold should be

22 increased, and to 6-15-30.

23 In our initial remarks -- in my initial remarks -- I

24 talked about how the current thresholds allow a small

25 subset of shareholders to override indefinitely the

1 expressed will of the substantial majority. We do think

2 it's a concern. Our members think it's a concern. And

3 we do think this is something that should be looked at.

4 MS. CHIU: A few things. We're talking about

5 resubmission thresholds, which are a timeout. There are

6 date-old proposals -- not common, but I'm aware of of one

7 that's been around for 17 years on the same proxy

8 statement. And they've always met the resubmission

9 threshold, obviously.

10 So there's the resubmission threshold for proposals

11 that get low votes, whatever "low votes" means is what

12 we're trying to figure out. That's one. But there could

13 also be a timeout for a proposal that's lingered on for

14 an X number of years. Seventeen years does seem like a

15 long time without getting majority support. So there

16 could be two kinds of resubmission thresholds.

17 As the data shows, even at the highest resubmission

18 threshold that's being considered, it would only have

19 kicked out 475 proposals over a seven-year period of

20 3,000-plus proposals. Whether or not that's a

21 significant number, it doesn't seem significant to me.

22 I'm sure other people can debate that.

23 In terms of some mentions about "the process works,"

24 there's no process that can't be improved. I would say

25 that companies do spend a lot of time and money on this.

1 And there are some costs in some of the comment letters

2 that you've received about the estimates.

3 They range, frankly, depending on how seriously the

4 companies want to take the process. The more serious

5 companies who would like to hear from their shareholders,

6 who want to take this process seriously, who want to

7 engage their boards, who want to engage their governance

8 committee early, it's going to cost more.

9 So it's only going to cost less if a company says,

10 oh, I don't -- we'll just -- it doesn't matter. We don't

11 need to talk to them. We don't need to engage with them.

12 We'll just let people vote.

13 MS. BRIGHTWELL: Mike?

14 MR. GARLAND: I just want to respond to Ning's point.

15 I would argue that it's the companies that want to try

16 the hardest to deflect the proposal where it's most

17 costly. The costs that are involved in the no-action

18 process, those are entirely voluntary costs the companies

19 elect to absorb in order to do their best to keep the

20 proposal out of the proxy statement.

21 MS. BRIGHTWELL: Dannette?

22 MS. SMITH: I think we've got the wrong definition

23 of cost. We're talking -- the answer that Mike just gave

24 was about out-of-pocket costs. That's not the main cost

25 of a shareholder proposal.

1 And the main cost of a shareholder proposal is the

2 time and research and energy that the company puts into

3 looking into the proposal, putting it on the board

4 agenda, having the board discuss it, having the time for

5 the discussion away from something else.

6 Those are not out-of-pocket costs, but they are

7 still real costs. And I don't think anybody on this

8 panel is disagreeing that it's an appropriate resource

9 and that it should be maintained. But to say that it's

10 working well and that there's no room for improvement I

11 think is an overstatement.

12 MS. BRIGHTWELL: And just to follow up on that a

13 big, when companies are considering these proposals, they

14 go into the proxy statement, a vote is taken on them --

15 is there a point at which, when the votes come in -- is

16 there a level of shareholder where you look at it and

17 say, oh, maybe we need to go back and think about this

18 again?

19 What might that be? Are there ideas or thresholds

20 about what the is in terms of when management and the

21 board get back together and say, well, maybe we need to

22 think more about this one?

23 MS. SMITH: So I'll start with that. There's a

24 whole variety of answers that you can give to that. So

25 I'm going to give you an entire variety. And it depends

1 upon if what you mean is at what point should there be  
2 negative consequences to a company for failing to adopt?  
3 Or should somebody understand?

4 So I'll start with: We had a 95 percent say on pay  
5 vote. Everyone would say that's overwhelming support.  
6 Right? So there were three -- we found out from the NPX  
7 vote there were three of our larger shareholders who  
8 voted against say on pay. We are actively trying to find  
9 out why each one of them cast their no vote.

10 I know for one. I have a meeting scheduled with the  
11 second. And the third I can't find anybody to talk to  
12 at. So that's one issue. But that's not going to be a  
13 proxy statement discussion in my next year's proxy.

14 I think if you're looking for at what point in time  
15 should companies have negative repercussions for failing  
16 to implement some version of the proposal, that should be  
17 more than a majority because we now have something that  
18 went to a vote. All the shareholders got to consider it.

19 And if more than a majority don't support it, then more  
20 than a majority of them don't support it.

21 That's not to say that the company shouldn't  
22 understand what the folks who did vote in favor of it  
23 wanted. And I think people should. But I don't think  
24 that's something where negative repercussions should  
25 come.

1 MS. BRIGHTWELL: Jonas?

2 MR. KRON: Just in my own experience, I've seen a  
3 lot of companies who respond in different ways to  
4 different votes. But before I give a couple of examples,  
5 I think it's important to remember that these are  
6 prefatory proposals. They can get 99.9 percent of the  
7 vote and it doesn't force anything to happen.

8 And so it's important to think of these not -- these  
9 aren't mandatory bylaw changes. This is an opportunity  
10 for the company to get the feedback from investors on  
11 this particular issue. It's an opportunity for investors  
12 to understand what other investors think about. This is  
13 a useful information exchange. It provides data in I  
14 think a very cost-effective way for everybody.

15 I've seen some companies get votes in the 80s, 75  
16 percent, 80 percent vote on a governance issue, and they  
17 are dead set against it. This one company I have in  
18 mind, classified boards, year after year they'll get a  
19 75, 80 percent board. They will not budge and they do  
20 not change anything. And there's nothing to force that,  
21 at least in terms of a shareholder proposal.

22 But another example, and this comes back to the dual  
23 class structure issue, we had a shareholder proposal that  
24 we filed a Facebook last year asking them to have a risk  
25 oversight committee. That proposal, because of the dual

1 class structure, got about 11 percent.

2 But that 11 percent, if you look at it by pulling  
3 out all of the insider shares, that was actually a 45  
4 percent vote. And the company did respond, and they have  
5 made a change, and they've turned their audit committee  
6 into an audit and risk oversight committee. Earlier, a  
7 previous vote at Facebook, actually, on an independent  
8 board chair got a 12 percent vote, which actually  
9 translates to about 52 percent of outsiders.

10 So some companies respond in the teens. Some  
11 companies respond in the 20s. Some companies respond in  
12 the 30s. If you look of it this way, and you're not  
13 thinking so much in terms of did you get 50 percent plus  
14 one -- but if a third of your investors feel strongly  
15 about an issue, or even if 15 percent of your investors  
16 feel strongly about an issue that they're voting in favor  
17 of a proposal, that's worthy of consideration.

18 And again, it's not forcing anything. It's giving  
19 them positive, useful data and information.

20 MR. MCNAIR: So we're going to switch gears a little  
21 bit. We have just a few minutes left of this panel, and  
22 we want to give the next panel enough time to group and  
23 give folks a quick break. But we've talked now on a  
24 couple of topics of reform that would really involve  
25 rulemaking. We want to just touch on a few things that

1 the Staff could do.

2 And the first thing that I'd like to mention is, one  
3 of the things that has become important to us over the  
4 last year or so is hearing from the board. And you saw  
5 us issue a Staff Legal Bulletin at the beginning of last  
6 proxy season and another one just a couple weeks ago  
7 where we're looking for input from the board when  
8 companies are making arguments under either the ordinary  
9 business exclusion or the economic relevance exception.

10 And in the most recent Staff Legal Bulletin, we  
11 included a number of substantive factors that we found  
12 useful in looking at no-action requests last proxy season  
13 that included a board discussion. And we're curious if  
14 there are other factors and other things that because  
15 look at, when they are evaluating a proposal's  
16 significance, that we should be aware of.

17 And so, Maria, we'll start with you.

18 MS. GHAZAL: Thank you, Matt. So we certainly  
19 appreciated the additional guidance that the Staff  
20 provided regarding the application of the ordinary  
21 business exclusion. And then the list of factors that  
22 you listed in 14J was a very good first step to helping  
23 companies understand the aspects of board analysis that  
24 have been important to you as the Staff during the no-  
25 action letter review.

1 One issue that has arisen in the no-action letter  
2 process is the relative weight given to past votes on the  
3 same or similar proposals, as compared to what Jonas was  
4 talking about, the ongoing current discussion with  
5 investors and the investors' interest that they're  
6 expressing in the company during shareholder engagement.

7 So one of the reasons why we're particularly  
8 interested in the weight given to past votes is  
9 especially because of the influence of proxy advisory  
10 firms that Tom and others have talked about, and that  
11 influence as far as the voting outcome. So that's just  
12 one area that we think is important to better understand.

13 MR. MCNAIR: Yes. Mike?

14 MR. GARLAND: I just wanted to make a point, and  
15 that's specific to the no-action process. But with  
16 respect to proposals, we've been involved in a number of  
17 situations whereby we've had a very productive  
18 negotiation with management, and management has been  
19 unable to get the attention of its board.

20 We think we're close to an agreement, and there's  
21 been a wink and a nod whereby, go ahead and file the  
22 proposal, and that will make their job internally easier  
23 to raise an issue that they've been trying to put in  
24 front of the board.

25 So I agree. I think boards should look at the

1 Bulletin process, and also through some of the  
2 stakeholder meetings have been very valuable as well, to  
3 have that exchange of information.

4 So in terms of things that can be done in the Staff  
5 Legal Bulletin/no-action letter process, there certainly  
6 are opportunities to provide greater clarity and  
7 therefore greater efficiencies.

8 MR. MCNAIR: Thanks. We hear that quite frequently,  
9 and so it's good to hear it again. And we'll do our best  
10 to make changes going forward in that regard.

11 That concludes this panel. I would like to thank  
12 you all so much for your time in not only attending the  
13 panel but in your preparation. There will be a quick  
14 break, and the final panel will start at 3:00. Thank  
15 you.

16 (A brief recess was taken.)

17 PANEL THREE - PROXY ADVISORY FIRMS:  
18 THE CURRENT AND FUTURE LANDSCAPE

19 MR. CELLUPICA: Okay. We're going to get started.  
20 Thank you all for joining. Let me start by introducing  
21 our distinguished panelists, and their full biographies  
22 are on the Spotlight page on our website.

23 They are, in alphabetical order, starting from my  
24 left, Jonathan Bailey from Neuberger Berman; Patti  
25 Grammar from the Ohio Public Employees Retirement System;

1 issues. So I don't know if a corporate secretary here  
2 would volunteer that. But I think there are times when  
3 the process has served our negotiation partners.

4 MS. BRIGHTWELL: Jonas?

5 MR. KRON: Just on Staff Legal Bulletins, I greatly  
6 appreciate the opportunity to get additional insights  
7 into what the Staff is thinking about and looking at. I  
8 think we all can benefit from having a more efficient  
9 process, where we understand the way the proposals are  
10 being annualized. And so I think Staff Legal Bulletins  
11 can offer that.

12 This last Staff Legal Bulletin on micromanagement  
13 still does leave me with some questions, and I guess a  
14 couple of thoughts along those lines. If we can get more  
15 information from no-action letter decisions so that we  
16 can understand what it is in particular that was running  
17 afoul of the rule, I think that would be really helpful.

18 I think one of the things that we run into in terms  
19 of the cost of the process is we don't always know what  
20 it was that worked and what it was that didn't work. And  
21 so we end up with companies trying a bunch of different  
22 arguments to see what sticks. We have shareholders that  
23 try some different ways of writing the shareholder  
24 proposal to see what works.

25 It seems like that could be, through the Staff Legal

1 Scot Draeger from R.M. Davis Private Wealth Management;  
2 Sean Egan from Egan-Jones Proxy Services; Senator Phil  
3 Gramm from the American Enterprise Institute; John Kim  
4 from General Motors; Adam Kokas from Atlas Air Worldwide;  
5 Rakhi Kumar from State Street Global Advisors; Katherine  
6 "KT" Rabin from Glass Lewis; Gary Retelny from  
7 Institutional Shareholder Services, or ISS; and Professor  
8 Ed Rock from the New York University School of Law.

9 And we are also joined by a couple of our  
10 Commissioners, Commissioner Peirce and Commissioner  
11 Roisman, and additional Commissioners and the Chairman  
12 may be joining us in a few minutes.

13 So to start off, a couple of logistical reminders.  
14 First, a reminder to our panelists: If you want to  
15 speak, you need to press the button to turn the  
16 microphone on. And please turn it off when you're  
17 finished.

18 Also, while you're speaking, please keep the  
19 microphone close to your face so that we can be sure it  
20 picks up what you're saying.

21 And we'll be directing questions to panelists  
22 initially. If you want to comment on something that's  
23 said by one of the other panelists, we ask that you  
24 please take your name card and turn it on its side.

25 So I'd like to start out first with some general

1 questions for our investment advisors about how they use  
2 proxy advisory firms, and start off with a question  
3 about: How and why are proxy advisory firms currently  
4 being used?

5 And are there differences in how different  
6 investment advisors use proxy advisory firms? Has their  
7 role evolved over time? And in particular, has the  
8 continued growth of index funds had an effect on the role  
9 of proxy advisory firms? And Rakhi, maybe if I can start  
10 with you, and then turn to Jonathan and then Scot.

11 MS. KUMAR: Yes. Thank you. Thank you to the  
12 Commissioners for the invitation, as well as the Staff.

13 So we use the proxy advisory firms in three ways.  
14 One is to execute our vote guidelines; two, as research  
15 insides; and three, for the operational ease that they  
16 provide to their platform, which addresses all the  
17 problems we have. They try to solve all the problems  
18 that we talked about this morning.

19 We have our own voting guidelines, and one of the  
20 things, the question you had, is: Has the growth of  
21 index funds really affected the role of proxy advisory  
22 firms? I can say the growth of index funds has helped  
23 build relations between companies and an investor they  
24 know is going to be there year after year.

25 It has allowed for a dialogue between investors and

1 a company, allowed for multiple-year engagement, and  
2 patience with regard to effecting change, and a dialogue  
3 of whether the change is relevant. It's moved away from  
4 a one-size-fits-all approach to governance and here we  
5 actually have the ability to understand the company's  
6 perspective when we're making a vote decision.

7 We also provide thought leadership on issues which  
8 are gray such as what does independent board leadership  
9 look like? We realize it's not just as easy as flipping  
10 the role of a chair and CEO. We realize it has much more  
11 to it, such as the individual in place, the time  
12 commitment, the job description.

13 So I think what we feel is that we have brought to  
14 the process an independence of thought, rigor, and  
15 alignment with our investment strategy and time horizon  
16 that is very important in the proxy voting process.

17 MR. BAILEY: I'd like to echo the thanks for the  
18 invitation to be here to the Commissioners and the start.  
19 Neuberger Berman is an active manager, so all of the  
20 securities we're buying, we're choosing to buy.

21 But that doesn't mean that we always take the view  
22 that we agree with the board or management on everything  
23 that there's a vote to be cast on. We have a fiduciary  
24 responsibility to consider the position that's in the  
25 best interests of our clients.

1 And so that means that we have to have an  
2 independent, rigorously researched perspective on how to  
3 cast those votes. And that's something that we do every  
4 year in conjunction with our portfolio managers and our  
5 analysts and codify and publish, and our clients are  
6 fully aware of.

7 We use the advisory services, ISS/Glass Lewis, in  
8 particular, really for two main objectives. The first is  
9 work for our management. We have to vote about four and  
10 a half thousand meetings a year. It's a cost-saving and  
11 an efficiency game to use a service provider like them to  
12 execute the work for our management around how those  
13 proxies are voted.

14 The second is in data aggregation. A standardized  
15 form of pulling data together around certain elements of  
16 the proxy are very helpful for us in executing our own  
17 independent policy. So those are two services that we  
18 think that they bring to the table, and we're able to  
19 judge which of the providers we want to use at any point,  
20 to audit the effectiveness of what they do, and to check  
21 any potential conflicts of interest as we go through  
22 that process.

23 MR. DRAEGER: Yes. Thank you in addition for  
24 inviting me as, really, a representative of the average  
25 registered investment advisor or mid-sized/small

1 advisors.

2 For many advisors, it's really a practical  
3 consideration in how to fulfill the mechanics of the  
4 proxy voting in addition to tools available to ensure a  
5 conscientious and best effort at fulfilling your duty of  
6 care and reviewing all the important issues there are to  
7 consider in an industry with a growing number of  
8 interests by both clients and investor advocates.

9 So for our firm, during its 40-year history we voted  
10 internally. We had research analysts. We have a small  
11 research department, and they did, in addition to the  
12 investment research, the research on proxies and voting.

13 Over time, that grew to be a huge responsibility.  
14 And the analysts really found that they were spending so  
15 much time focused on proxies that it left them with  
16 resources lacking to do their day-to-day, typical  
17 investment work in the portfolio investments themselves.

18 So we really needed an effective way to ensure a  
19 conscientious approach to aggregating and reviewing and  
20 making decisions upon an enormous amount of information.

21 So to do that, we did turn to ISS, which became very  
22 important for us both with respect to the mechanics of  
23 the voting, which in itself is very time-consuming, and  
24 also in the research and recommendations itself.

25 From our perspective, and I think most people in our

1 role, we view an important and admirable part of the  
2 diligence process to be a pretty rigorous review of the  
3 benchmark standards, to begin with, with ISS.

4 So we used the research, but there's a ton of work  
5 that goes into reviewing what appear to be a pretty wide,  
6 sweeping, and thoughtful mechanism for developing  
7 corporate governance standards that RAAs in the community  
8 can then take a look at and see whether they're  
9 consistent or inconsistent in each of the areas with the  
10 interests of their own clients, and the perspective of  
11 the firm, the philosophy of the firm.

12 One other thing that's very helpful for us is we  
13 have individual clients who want us to customize their  
14 votes. They have issues that are very important to them  
15 that may be inconsistent with our firm's overall  
16 philosophy, but they've made it known to us that they may  
17 want to take measures to ensure that voting is consistent  
18 with their views on board diversity or particular  
19 environmental issues.

20 So the ability to automate votes for those clients  
21 who want us to consistently vote in certain ways through  
22 the customization element has been actually a huge time-  
23 saver in a way that we fulfill our commitments to the  
24 clients who have independent interests.

25 MR. CELLUPICA: Thank you. And before I continue, I

1 index funds. Today, index funds own about 29 percent of  
2 American equities. They're the largest shareholder of 40  
3 percent of the S&P 500 companies. And because of the  
4 efficiency of investing in indexes, this is clearly going  
5 to grow. So I think it is totally conceivable that we  
6 could end up with a situation where more than half the  
7 equities in America would be owned by index funds.

8 Now, when this first started being debated, there  
9 was a big debate about what this means in terms of market  
10 efficiency. But the reality is, the market will correct  
11 itself because to the degree that the momentum buying  
12 creates mispriced assets, then people who pick stocks  
13 based on research will profit, and capital will move, and  
14 the rates will be fixed in terms of efficiency.

15 But what has not been discussed, and what  
16 desperately needs to be discussed, in my humble opinion,  
17 is corporate governance. And here's the problem, as I  
18 see it. First of all, I think advisory firms can provide  
19 a vital function. I can see why people are using them,  
20 and I think their use will grow.

21 But here's the problem. You're an index fund.  
22 You're buying an index. You're being called on to vote  
23 in a fight involving proxies on an issue like the  
24 environment. Okay? How you vote, what happens to that  
25 one share, will affect the value of the index, but

1 want to acknowledge that Chairman Clayton has joined us.  
2 Patti, do you have anything to add to that? And  
3 then after Patti, Senator Gramm, if you have any thoughts  
4 particularly on the growth of index funds.

5 MS. BRAMMER: Yes. Thank you. And I'd like to  
6 thank the Commissioners and Staff for the opportunity to  
7 be a part of the conversation today.

8 To answer the question of how we partner with proxy  
9 advisory firms, I'd like to give a snapshot of who we  
10 are. The Ohio Public Employees Retirement System is the  
11 twelfth largest public retirement system in the U.S. We  
12 have over one million members, and that's Ohio public  
13 employees and retirees. It's our fiduciary  
14 responsibility to vote proxies in their best interests,  
15 which means increasing shareholder returns. The way that  
16 we're able to do that is by partnering with a proxy  
17 advisory firm.

18 We have our own corporate governance policy and  
19 guidelines, and we contract with a proxy advisory firm  
20 for two services: for their voting platform, which I  
21 believe is the workforce that Jonathan mentioned earlier;  
22 and then also for research. But it's our guidelines and  
23 policy that drive how our votes are cast.

24 MR. CELLUPICA: Senator?

25 SENATOR GRAMM: I want to comment on the growth of

1 everybody else selling the index will be affected  
2 equally.

3 You're going to be relatively unaffected by the  
4 profitability of the company where you're casting those  
5 proxies. But you may very well be affected by the public  
6 perception of your actions, and therefore the  
7 marketability of your index.

8 So there is clearly, on its face, a conflict of  
9 interest on the part of index funds in casting these  
10 votes on issues that are not directly related to the  
11 profitability of the company. And this is going to grow,  
12 whether we like it or whether we don't like it.

13 And I think we've got to come to grips with it  
14 because I think what is clearly happening is that index  
15 funds are using these proxy fights that are high profile,  
16 that involve political or social issues, as a marketing  
17 tool. If they're not doing it, they're not maximizing  
18 their profits.

19 And I think there is a very real danger here that if  
20 we don't come to grips with this problem, that we're  
21 going to begin to affect the competitiveness of corporate  
22 America. I want to applaud what you've done in  
23 withdrawing these two letters. I think proxy advisors  
24 and index funds will always have fiduciary responsibility  
25 in everything they do.

1 MR. CELLUPICA: Thank you. And Rakhi, I think you  
2 wanted to respond to that.

3 MS. KUMAR: Yes. So Senator Gramm's very right that  
4 it is our fiduciary responsibility to look at the long-  
5 term returns of a company.

6 I think where we see clear connection between many  
7 of the issues we are raising as long-term investors and  
8 returns, where he may not see that, we start with  
9 strategy in our conversations and engagement. Right? We  
10 really try to understand where the business is headed and  
11 how they are looking.

12 Time horizon is the very long term because guess  
13 what? We get paid out last as a long-term equity  
14 investor. We get paid out after -- the government can  
15 take any fines after employees are paid their dues, after  
16 bondholders. We actually do have to take into account  
17 these what he may consider ES&G issues which actually --  
18 and anecdotally, it has had an impact on returns.

19 So I'll talk about a food and beverage company that  
20 had an incident because it didn't wash its lettuce. The  
21 stock price was impacted. Right? We've had a company  
22 that had a spill. Their stock price was impacted.

23 These are real costs that do impact returns for a  
24 company, and that's why it's important for us as long-  
25 term investors to ask the questions instead of looking at

1 thousands of securities they own in their portfolios.

2 What ISS does, essentially, is help them with the  
3 work flow that has been mentioned already in actually  
4 executing those votes, based on their own individual  
5 custom policies. We also have a whole slew of other  
6 policies that we can talk to that companies subscribe to.

7 But the vast majority of ISS's institutional  
8 shareholders -- actually, 87 percent of the shares that  
9 we execute votes for -- vote as per their own custom  
10 policies. So if you're talking about the mechanics of  
11 the vote, and you happen to call that robo-voting, then  
12 I'm not going to quibble with that, although I do  
13 disagree with the use of the term.

14 But if you're talking about one vote or one  
15 recommendation and it is then executed by every client  
16 that ISS has, that could not be further from the truth.

17 MR. CELLUPICA: KT, I think you wanted to add to  
18 that.

19 MS. RABIN: Yes. I just want to add to what Gary's  
20 saying because the primary job of a proxy advisor --  
21 Glass Lewis, ISS, Egan-Jones -- is to execute votes in  
22 accordance with the specific instructions of our clients.  
23

24 And by that, time that they can have a policy for a  
25 particular issue that is different than Glass Lewis's or

1 short-term issues and ensuring that the interests of  
2 shareholders and long-term shareholders are considered in  
3 business strategy.

4 MR. CELLUPICA: Thank you. I'd like to get into one  
5 of the common criticisms that's sometimes heard regarding  
6 proxy advisory firms, and that is the idea that  
7 investment managers vote automatically in line with a  
8 proxy advisory firm's recommendation, so-called robo-  
9 voting. And maybe, Gary, if you can give your thoughts  
10 on that, and then Scot, from the investment advisor  
11 perspective.

12 MR. RETELNY: Thank you, Paul. And thank you to the  
13 SEC for hosting this roundtable. I'm sure it will be  
14 very informative.

15 First of all, robo-voting, the term itself, is used  
16 in a way that seems to be pejorative in some fashion.  
17 And let me take a step back for a second and talk about  
18 the question that you've just specifically asked.

19 We don't really think of it as robo-voting. We  
20 think of it in very, very different ways, but  
21 particularly think of it as artificial intelligence, if  
22 you will. Think of investors. ISS is an investor-  
23 centric company. But think of investors who actually  
24 have their own custom policies that they have designed  
25 and that they want to implement with regards to the many

1 ISS's or Egan-Jones's, or it could have a policy that is  
2 the same as Glass Lewis's or ISS's or Egan-Jones's  
3 policy.

4 But at the end of the day, when the client becomes -  
5 - when the institutional investor becomes a client, it's  
6 not like they just sign a contract and say, oh, yeah,  
7 we've taken a cursory look at your policy and that seems  
8 to make sense. So go ahead and do the voting and then  
9 send us the reporting at the end of the year. I mean,  
10 there's a lot of work that goes into reviewing and  
11 adopting the policies that we put in front of them for  
12 them for them to review.

13 And as Gary said, just -- like at Glass Lewis, it's  
14 the same thing. At least 80 percent of the voting that's  
15 getting done is getting done in some customized way that  
16 isn't actually similar to ours. Right?

17 So I just think that that gets lost, that somehow we  
18 are the ones who -- the proxy advisors are the ones that  
19 are advising the vote, when at the end of the day, what  
20 we're doing is executing votes in accordance with the  
21 specific instructions of our clients. Whatever policy it  
22 is, it's their policy.

23 And then I also just want to thank Chairman Clayton  
24 and the Commission and the Staff for putting this  
25 together and for inviting us to participate.

1 MR. CELLUPICA: Scot?

2 MR. DRAEGER: So I want to talk for a minute about

3 the real-world way that advisors use these services. And

4 so our firm represents almost no institutions;

5 exclusively, thousands of Main Street families that the

6 Chairman referenced early in the day.

7 And what we want to do is make sure that we vote in

8 accordance with their wishes. But to the extent that

9 they don't give us their wishes, to make sure that we're

10 voting in a way that's reasonably designed to be highly

11 conscientious and in fulfillment of our duty.

12 So the idea that automation of input that we give

13 the proxy advisory firm is -- you know, robo-voting --

14 misrepresents the level of diligence that goes into the

15 review of the benchmarks to begin with. If you've ever

16 actually reviewed the benchmarks, whether it's ISS or

17 anybody else, they're very extensive and much more

18 detailed than small firm like ours could ever develop

19 with our own independent research.

20 And so that's not a fact that I would want to be

21 left out. So even if you did just start with the

22 presumption that you were utilizing the benchmarks to

23 make decisions on behalf of your clients, that in and of

24 itself is a huge level of diligence on the part of the

25 RAA community, and necessary level of reliance for

1 operating reasons. Now, we go much further than that,

2 but we have 50 employees. I can't imagine going much

3 further if you had ten or 20 employees in your firm.

4 The other thing is, a lot of the -- if you read

5 through the actual benchmarks, which I do in my diligence

6 personally and in the context of voting, there's many

7 things that you pull offline. And what ISS's

8 recommendation is doesn't ultimately rule the way that

9 you're going to vote.

10 If you look at them, things like share repos, or

11 recaps of preferred stock issuances -- there's a long

12 list of things, if you look in the benchmark it just says

13 "case by case basis." And if you have one of those

14 companies as a portfolio company, then you're going to go

15 and look at that irrespective of what ISS's position is,

16 even if you're a relatively small advisor.

17 So I guess my experience is that the term "robo-

18 voting" is a red herring. It doesn't exist. And we

19 don't hold any funds. We hold only individual equity

20 positions.

21 And the other thing I'd say is, all day long I've

22 heard about the shareholder proposals as the driver. I

23 looked at our portfolio companies. They've dealt with a

24 shareholder proposal approximately once every five to six

25 years. This is a non-issue for the regular advisors.

1 So I would say don't let a policy debate on a very

2 low volume of that drive the resources that are available

3 or not available to the investment advisor community.

4 MR. CELLUPICA: Chairman Clayton, you wanted to make

5 a point or question?

6 CHAIRMAN CLAYTON: Yes. Unfortunately, I have

7 another engagement. I want to thank all of you for being

8 here. This is an important subject. And I just want to

9 raise a question that I have. And you don't need to

10 address it specifically, but hopefully in the comment

11 file.

12 The objective -- or not the objective -- an

13 objective at the end of the day is that the people whose

14 shares, whose money, is in for the long term, they want

15 to know that the investment advisor -- whether is using a

16 proxy advisor or not, I think they want to know that

17 they're making an informed -- and I want to say not just

18 an informed voting decision across our companies, but an

19 informed company-specific voting decision. And that's

20 where we're trying to get to. Are they getting that

21 informed company-specific voting decision?

22 I thank you all. I wish you a good afternoon. I

23 hope I make it back in time to say something at the end,

24 but if I don't, it's been a terrific day and thank you

25 very much.

1 MR. CELLUPICA: Thank you.

2 Jonathan and then Patti and then, quickly, Senator

3 Gramm.

4 MR. BAILEY: So last year, in 2017, we voted on the

5 reelection of about 23,000 directors, and we supported

6 about 90 percent of those individuals. Many of those

7 votes were not contentious; they were clear, very easy

8 for us to reach.

9 So it is efficient and cost-saving for our clients

10 to be able to use the work flow management capabilities

11 that the proxy advisory firms offer us to be able to make

12 those decisions.

13 Where we think we add value as active investors is

14 our portfolio managers and our analysts spending time

15 deeply diligence-ing and making informed decisions where

16 there are issues, where there is contention, where a

17 company's governance structure is not aligned with best

18 practice and where value is not being created for

19 clients.

20 So we think that it's very important that you have

21 that human element in there to be able to engage with

22 management to ask questions and to read the proxy itself,

23 not just to rely on the advisory work. But holistically,

24 that's, I think, how many asset managers operate. And so

25 it's a combination of the services that we get from the

1 PAFs and a range of other inputs and expertise that we  
 2 bring to the table.  
 3 MS. BRAMMER: Well, I was going to ask for clarity  
 4 if robo-voting in this context really did equate to the  
 5 mechanics of applying an institutional investor's policy.  
 6 But I think Chairman Clayton's comment cleared that up  
 7 for me, and that is how robo-voting is.  
 8 So I would echo some of Jonathan's comments and just  
 9 say that OPERS votes in 10,000 meetings, basically, every  
 10 year, and we have a staff of three individuals that do  
 11 that.  
 12 So the efficiencies that are gained by being able to  
 13 work with the work flow and have our own policy overlaid  
 14 and voted on the items that are not contentious and do  
 15 not need additional scrutiny or analysis, I can't say  
 16 enough that that allows us to fulfill our fiduciary duty.  
 17 And it would be virtually impossible to do that without  
 18 that aspect being available.  
 19 MR. CELLUPICA: Thank you.  
 20 Senator?  
 21 SENATOR GRAMM: Well, first of all, I don't think  
 22 there's any ground -- there are any grounds for  
 23 criticizing proxy advisors. They exist because firms  
 24 need them because firms have invested huge amounts of  
 25 money and focused on the low commission. They don't have

1 the staff to make corporate governance decisions.  
 2 And to the extent that the derogatory term "robo"  
 3 means that you're giving the same advice on the same  
 4 company to many different people, that's what the  
 5 industry's about. So that's not the problem.  
 6 The problem is that you exempt the index fund from  
 7 fiduciary responsibility if they follow the advice of the  
 8 proxy advisor. That's the problem. They're not the  
 9 problem. If you don't exempt anybody from fiduciary  
 10 responsibility, then it seems to me that you solve most  
 11 of these problems.  
 12 But the criticism that proxy firms, by doing this  
 13 over and over for many different clients, can do it  
 14 cheaper, more efficient, and that somehow that's a robo  
 15 solution I think is totally unfair and it just don't make  
 16 any sense.  
 17 Obviously they can do it cheaper than the index fund  
 18 because they're doing it for a bunch of different people.  
 19 And that's what the industry's about, and it should be  
 20 about.  
 21 MR. CELLUPICA: Okay. I'll let -- Professor Rock,  
 22 you wanted to comment, and then I think we'll move on to  
 23 a different topic.  
 24 PROFESSOR ROCK: I want to give just a little bit of  
 25 historical background to Senator Gramm's comment, which I

1 think I quite agree with.  
 2 Why is it that asset managers universally use a  
 3 guidelines-based approach to voting? And the answer  
 4 really is with the SEC and with the 2003 rulemaking on  
 5 asset advisors -- on investment advisors.  
 6 And if you talk to finance academics, probably half  
 7 of them would take the view that governance is firm-  
 8 specific, it's endogenous, and in reasonably competitive  
 9 capital markets, firms will adopt the governance  
 10 structure that works for them.  
 11 And so if you come from that view of governance, it  
 12 would be perfectly plausible for an asset manager to say,  
 13 we believe there are no general principles that were best  
 14 practices in corporate governance.  
 15 Rather, we believe that it depends on firm-specific  
 16 factors, and that the reason we invest in firms is  
 17 because we basically trust the management. And so our  
 18 approach would be to vote with management all the time  
 19 unless there's some particular problem that is brought to  
 20 our attention, and then we'll deal with it on case-by-  
 21 case basis.  
 22 And nobody does that because there's this notion  
 23 that you need to have proxy voting guidelines. But in  
 24 terms of maximizing firm value and in terms of maximizing  
 25 the value of the assets under management, that's actually

1 quite a plausible, quite a plausible approach that firms'  
 2 asset managers, if they wanted to it seems to me should  
 3 be able to adopt.  
 4 Now, maybe in the marketplace investors don't want  
 5 that, in which case the investors are free to choose, and  
 6 they can choose the mass market vision, as Senator Gramm  
 7 points out. I use index funds because you get huge  
 8 diversification at very low cost. But with that is going  
 9 to come not a lot of firm-specific analysis. With that's  
 10 going to come some sort of guidelines approach.  
 11 But if we said to firms, if we said to asset  
 12 managers, "You need to vote responsibly, but we're not  
 13 going to tell you that guidelines is the only responsible  
 14 way to vote," that might open up for greater diversity in  
 15 the approach to how you vote in particular companies.  
 16 MR. CELLUPICA: Yes. KT, very quickly. I think  
 17 we'll turn later to the question of the 2003 SEC rules  
 18 and their role in this ecosystem.  
 19 MS. RABIN: I will be quick. I just think what Ed  
 20 has said presumes that there is a black-and-white  
 21 approach to implementing those guidelines; speaking for  
 22 Glass Lewis, that our approach is that we take a case-by-  
 23 case approach and we apply bounded judgment.  
 24 So I think that you're mischaracterizing what's  
 25 happening, that the guidelines are guidelines so they're

1 a framework for evaluating governance on various topics  
2 at the company that's under coverage. But I think what  
3 you're describing is a situation that's more black and  
4 white, and I don't think it's a good characterization of  
5 what's happening. That's all.

6 PROFESSOR ROCK: No. I think you guys do great  
7 work. I'm just saying there are different approaches to  
8 how one might decide to vote. And it seems to me that  
9 asset managers could quite responsibly choose one of  
10 these other approaches. That's the only point.

11 MS. ANDERSON: Okay. I'd like to now turn to the  
12 topic of conflicts of interest because that is certainly  
13 a common theme that we continue to hear -- about proxy  
14 advisory firms' potential conflicts of interest arising  
15 either from their ownership structure, or if they provide  
16 certain consulting services to issuers.

17 So I want to turn it to our proxy advisory firm  
18 representatives first, and Sean, I'll start with you.  
19 What policies and procedures do you have in place to  
20 manage and mitigate potential conflicts of interest?

21 MR. EGAN: I was waiting for my turn. Let me  
22 introduce myself. I'm Sean Egan. I'm CEO of Egan-Jones  
23 Ratings. Egan-Jones owns Egan-Jones Proxy Services. I'm  
24 not involved on the day-to-day basis; I'm the CEO of the  
25 firm. And so I'm here as more of spokesperson than

1 And the third one is perhaps the most important to  
2 us, and we think it's the most pernicious. And most  
3 people in this room are over the age of 30, and so they  
4 won't understand it. But it's critical. And that is  
5 that platforms are absolutely important. They're the  
6 item in this area.

7 When you think about a trader's desk, they refer to  
8 it as real estate. I spoke to a leader, the head of a  
9 major investment advisor, and talked about what they're  
10 doing, how they're doing it. And they said they put in a  
11 voting platform and they will never change it; it was so  
12 difficult to put in and work out the kinks that  
13 they'll never change it.

14 And so from our perspective, it's critical to get on  
15 that platform. But you know what? We can't get on that  
16 platform. We simply can't. Okay? Unless things change.  
17 We've been trying to for the past eight years, and we've  
18 been stiff-armed with it.

19 So from my perspective, we view it -- it's not just  
20 mine; ours -- we view it as restraint of trade. And  
21 that's not the only area where it's a restraint of trade;  
22 there's also in the connection with a platform with the  
23 Broadridge. There's different things where the major  
24 firms are treated in one way and other firms are treated  
25 in another way, where you're at a massive competitive

1 anything else.

2 Regarding proxy advisory firms, I cannot defend the  
3 indefensible. What I mean by that is that there are  
4 conflicts that arise from consulting when you're also in  
5 the proxy advisory business.

6 If you're getting paid to give corporations early  
7 indications on voting and then turn around and vote, most  
8 people consider that to be problematic, and we're  
9 probably in that camp. We don't get involved in  
10 consulting, either directly or indirectly. That's point  
11 one.

12 Point two is that it's hard to defend inaccurate  
13 reports. If a report is wrong, it should be corrected,  
14 and it should be corrected as quickly as possible. The  
15 mechanism for that needs to be established, but at the  
16 same time, this is an important area. This is the  
17 oversight for major corporations.

18 And with the shift towards indexation, it's  
19 becoming more important over time. And by the way, I  
20 disagree with the good Senator. I tend to know that  
21 proxy advisory firms have an obligation, and in turn the  
22 investment advisors; when they're hiring somebody, they  
23 want to look at the conflicts of interest. So that's  
24 point number two. That is the inaccurate reports and  
25 correcting those inaccurate reports.

1 advantage.

2 So if you believe that the public is well-served by  
3 diversity of opinions, and that's certainly the case in  
4 equity research and other things, you don't have that in  
5 this area. And so you want to examine: What are those  
6 impediments?

7 And as I think Chairman Clayton or something said,  
8 that if this is a public utility, then treat it as a  
9 public utility. It begs the question of whether or not  
10 we want to go down that path. But there's little  
11 question that there's massive barriers that anybody  
12 entering this business -- and we've been in the business  
13 for about 15 years or so -- if you're not a top firm,  
14 it's very difficult to become more relevant over time.

15 You can have the absolute best at recommendations  
16 and the rest -- and by the way, Egan-Jones was named the  
17 number one firm for warning about the credit crisis. So  
18 we have some intelligence in broad areas. But there's  
19 been some real impediments to opening up the area to  
20 diversity of opinions.

21 MS. ANDERSON: Thank you. Either KT or Gary, do you  
22 mind taking on the question of your policies and  
23 procedures to manage and mitigate conflicts? And  
24 particularly in the wake of SLB-20, where the Commission  
25 Staff provided some guidance about how disclosure of

1 conflicts should take place. I'm wondering if anything's  
 2 changed since then.

3 MR. RETELNY: Sure, and thank you. First, ISS is a  
 4 registered investment advisor, so we'll start with that.

5 We do have a corporate business. It's called the  
 6 Corporate Solutions business. I know that people talk  
 7 about it in terms of consulting, but it is a data and  
 8 analytics-centric business that actually has an advisory  
 9 component that goes with it.

10 And it focuses on a number of things -- and I'll be  
 11 brief here -- including compensation as well as  
 12 governance, generally and broadly defined. So, for  
 13 example, peer groups, diversity of your board,  
 14 international issues that you might have because this is  
 15 not only U.S.-centric.

16 We acknowledge that there are potential conflicts of  
 17 interest in what we do, and we work extremely hard to  
 18 mitigate those potential conflicts of interest. We have  
 19 been in the corporate business, if I'm not mistaken, over  
 20 20 years.

21 We have a very strong firewall in place. Employees  
 22 do not talk to each other. They're essentially run by  
 23 different people in different firms. There's absolutely  
 24 no communication between what we consider our  
 25 institutional side of the business, the proxy advisory

1 side of the business, if you will, and the corporate side  
 2 of the business.

3 We do impose on the corporate side many of the same  
 4 things that we impose on the institutional side, and that  
 5 is a code of conduct and code of ethics that comes into  
 6 play. So we understand that there is that concern.

7 Clients spend a great deal of time in diligence --  
 8 addressing your second part of the question -- clients  
 9 spend a great deal of time diligencing ISS, and in  
 10 particular a great deal of time in talking about the  
 11 mitigation of these potential conflicts of interest.

12 We make extremely sure, when the sales folks of the  
 13 Corporate Solutions group go out, that they make clear to  
 14 issuers, that there is absolutely no quid pro quo, that  
 15 anything -- and if they subscribe to the suite of  
 16 products that we offer, there is no benefit in doing so  
 17 with regards to any influence, potentially, on our  
 18 recommendation. But it's not going to help against them,  
 19 either.

20 So we're very clear in how we do it. We disclose it  
 21 verbally, but we also disclose it legally in our  
 22 contracts and in the documents that we provide from a  
 23 marketing point of view. So we spent a great, great deal  
 24 of time in the mitigation of the potential conflict of  
 25 interest.

1 One thing that we do is enhanced transparency with  
 2 regards to conflicts as well. Remember that we have a  
 3 firewall between the businesses. So what we try to do is  
 4 to make sure that the institutional side of the business  
 5 is not aware who is a client of the corporate side.

6 So one of the ways that we provide that transparency  
 7 is that we provide to clients -- we don't do this  
 8 internally -- we provide to clients a tab on our platform  
 9 that essentially allows them to see who all our corporate  
 10 clients are; not only who all the corporate clients are,  
 11 but how much they pay ISS and what products they  
 12 subscribe for.

13 So we provide full and open transparency with  
 14 regards to the products and services that we offer to the  
 15 corporate clients. I'll stop there because I could  
 16 elaborate a little further.

17 MS. ANDERSON: And KT, please.

18 MS. RABIN: Glass Lewis, since the beginning -- we  
 19 launched our business as an independent proxy advisor,  
 20 and took the view that we shouldn't be providing  
 21 consulting services to the companies that we write on.  
 22 We also took the view -- at that time ISS wasn't doing  
 23 this, and I know they've changed their policies for  
 24 disclosing conflicts.

25 But we have always disclosed all conflicts on the

1 front page of the report, and those conflicts can include  
 2 anything ranging from conflicts relating to our ownership  
 3 -- as you know, we are owned by two pension fund --  
 4 private equity arms of two Canadian pension funds -- or  
 5 that could derive from our clients, or -- I don't want to  
 6 say minimal things, but some family relationship.

7 One time I remember the head of French research was  
 8 a Michelin, and of course he had to recuse himself from  
 9 having any involvement in writing -- he's not with the  
 10 company any more -- but writing on the Michelin report.  
 11 And of course we would disclose that we had that  
 12 relationship.

13 So we've always had this robust and evolving  
 14 practice. Of course, we have a compliance committee that  
 15 meets quarterly, and we talk about issues that are  
 16 developing. We don't wait a year to review the issue of  
 17 conflicts.

18 I forget who brought this up to us, but we got --  
 19 there was some press about a particular situation where  
 20 Glass Lewis's -- one of Glass Lewis's owners was listed  
 21 in the top 20 shareholders list that we get from one of  
 22 the providers from that type of data, and we include that  
 23 on the profile page for the company in the report.

24 And that company -- our process is to disclose the  
 25 ownership stakes where they are reportable in every

1 market, and the level is dependent on the market. And in  
2 this case, the fact that one of our owners landed on that  
3 top 20 shareholder list -- they didn't meet the -- their  
4 ownership stake didn't meet the reportable requirement,  
5 but it was there.

6 And it was clear that we needed to revisit our  
7 policies and procedures for capturing whatever  
8 information so that even though that data may or may not  
9 be correct, we want to make sure that if it's in the  
10 report, that it's noted that that particular shareholder  
11 happens to be an owner of Glass Lewis's.

12 So very robust, constantly evolving, the right  
13 people involved. We report up to our owners regularly on  
14 any kind of issues that come up from a compliance  
15 perspective.

16 MS. ANDERSON: Okay. Thank you.

17 I'd like to also get the perspective from our  
18 institutional investors here because certainly, as  
19 investment advisors, you have oversight of these  
20 potential conflicts of interest. Scot, I'll pick on you  
21 first since you turned your card.

22 MR. DRAEGER: Sure. I'm going to speak again to the  
23 practical side. The Commission has done a very  
24 conscientious job of deciding which conflicts are ones  
25 that can be cured through disclosure versus which

1 to be a lack of clarity or quality of disclosure  
2 currently. I think that the issue of whether the  
3 conflicts are ones that can be disclosed away is a  
4 different issue.

5 MS. ANDERSON: Jonathan or Patti or Rakhi, any other  
6 comments on disclosure of conflicts of interest and how  
7 you use that information?

8 MR. BAILEY: You're absolutely right. It is our  
9 responsibility to ask and to oversee the degree to which  
10 we think this is a concern. And as part of our diligence  
11 in selecting a service provider in this space, just as we  
12 would a service provider for data or for sell side  
13 research or for anything else, we have a process for  
14 doing that.

15 We have seen no evidence that there has been any  
16 impact from conflicts of interest on the services  
17 provided to us, and we feel comfortable with the level of  
18 disclosure that we get. And on an annual basis, we  
19 review that with our chosen service providers, and will  
20 continue to do so.

21 MS. ANDERSON: Rakhi, I'll turn to you next. Patti  
22 -- we'll get you next if we need to. Rakhi -- turn to  
23 you next time. Also curious in your response. If you  
24 could address whether you ever have an opportunity or a  
25 need to work with the firms about any of their potential

1 conflicts are ones that should be prohibited through the  
2 course of its history, whether it be with auditor  
3 independence or analyst conflicts or whatnot. And I'm  
4 fully confident in the Commission's ability and the  
5 Staff's ability to do that here or anywhere.

6 I would say, as a practical matter, to speak as a  
7 user of the service, for a proxy advisory firm service,  
8 the disclosures are ones that are easy to understand at  
9 present, and aren't dissimilar from an auditor  
10 independence.

11 I mean, they're selling services from a subsidiary  
12 to some of the issuers that they're doing research on.  
13 And as an RAA who's doing diligence on the firm, that's  
14 something I understand, and it's something that's not  
15 without concern.

16 But the transparency of the conflicts themselves are  
17 disclosed seemingly pretty well. If you're a user -- for  
18 ISS, anyway, is what I can speak to -- there's a  
19 dashboard that you go into. It's a very technical point.

20 But when you're looking down and you're making  
21 decisions about votes or categories of votes, with  
22 respect to every issuer there's a box on the dashboard  
23 that says "Conflict" that you can literally click on and  
24 get the information that was described.

25 So there really is not -- I wouldn't perceive there

1 conflicts.

2 MS. KUMAR: Yes. So as part of our due diligence  
3 review of our proxy advisory firm, we have been  
4 addressing conflicts and going deep into how they  
5 consider conflicts, what they consider as conflicts, and  
6 how they report conflicts. And we have for multiple  
7 years brought up issues with them with regards to  
8 strengthening their conflicts disclosure.

9 MR. CELLUPICA: Patti, did you want to offer a  
10 response? Then I'll turn to Adam.

11 MS. BRAMMER: Yes. I would just say that I can  
12 speak to -- our experience has been that yes, the  
13 conflict disclosure is very easy to understand. It's not  
14 boilerplate language. It does provide sufficient detail,  
15 and it is an element that we use and consider. But  
16 again, ultimately our own guidelines and policy are going  
17 to be what drives our voting decision.

18 MS. ANDERSON: All right. Let's get a response from  
19 our issuers on this point. Adam, do you have something  
20 to say in response?

21 MR. KOKAS: Thanks. Well, I first wanted to let  
22 everyone know on the web and in this room that there are  
23 issuers at the table as well.

24 (Laughter.)

25 MR. KOKAS: And 45 or 60 minutes in, I do want to

1 thank the Commissioners and Director Hinman and other  
2 members of the Staff for having us here today.

3 I would just note a couple things, I think, broadly.  
4 And Atlas Air, so I'm representing kind of a small to  
5 mid-cap company. So there are issues over time that have  
6 come up related to voting processes and things of that  
7 nature.

8 Conflicts of interest do exist. I absolutely  
9 acknowledge, as KT and Gary noted, that I think the  
10 disclosure in the reports has gotten a lot better. They  
11 certainly have. I would refer to, as well, those not on  
12 this panel, so such as the Society for Corporate  
13 Governance and the Chamber and NASDAQ as well, with some  
14 of their filings on conflict of interest.

15 But I do think disclosure has gotten better. I  
16 think, with the structures that are in place, are related  
17 to the different sides of the business for the price  
18 advisory firms, there is a bit of inevitability even with  
19 an ethical wall.

20 Again, I think disclosure is better. For a company  
21 like ours, while it is somewhat of an issue for us,  
22 things like voting recommendations and those kinds of  
23 things which we'll get to later, are a lot more important  
24 to us, I think.

25 MS. ANDERSON: And John, please go ahead.

1 MR. KIM: Thanks very much, and thanks to the  
2 Commissioners and the Staff for having us. And I would  
3 just say I'm here with General Motors but speaking in my  
4 personal capacity.

5 And I guess the other way I'd maybe think about  
6 conflicts of interest because I think you listen to the  
7 co-panelists, and it's obvious that the proxy advisory  
8 firms are providing a vital service. They are doing  
9 everything they can to ensure that they're managing  
10 conflicts and disclosing them.

11 But I guess from an issuer perspective, I guess,  
12 think about how the public perceives the conflicts of  
13 interest. We think about this process, I think, and  
14 we'll maybe get into it a bit later. It's naturally  
15 confrontational. Sometimes you get a negative review or  
16 recommendation, and you have different views on that.

17 And I think, thinking about that in the context of  
18 conflict disclosure, and specifically I think it's  
19 question 13 in SLB-20 about where that should go, I mean,  
20 on the one hand, the important thing is that our  
21 investors are confident in the reports being free of  
22 conflicts. That's sort of one issue.

23 But again, the other is just as proxy advisory  
24 firms, and index funds become critical players in the  
25 proxy solicitation ecosphere, I think we also have to

1 think about the public perception. And so I'm not a  
2 policy wonk.

3 But just thinking about things like making those  
4 conflicts evident on reports, to me that's something  
5 that, as someone that came up as a capital markets  
6 lawyer, makes sense. We put those disclosures in our  
7 offering documents so people know them and again can see  
8 them.

9 So maybe just share that perspective with the Staff  
10 as they think about it in that context.

11 MR. CELLUPICA: Thank you. And building on that, I  
12 would like to get into a little bit the formulation of  
13 proxy voting policies and recommendations and  
14 transparency of that process. And KT, maybe I'll start  
15 with you.

16 And if you can speak about how your firm formats its  
17 proxy voting guidelines and voting positions and  
18 corporate governance ratings, have there been any recent  
19 developments with respect to this process? And is there  
20 market feedback that you use in updating those guidelines  
21 and models used to determine recommendations?

22 MS. RABIN: Yes. Definitely. And if you look back  
23 to 2003 when we launched Glass Lewis, and the job of  
24 voting proxies, at least in North America, was largely a  
25 compliance function, and we were the ones, the team of

1 people, that came together at that time made up of  
2 lawyers and ex-bankers and people with investment  
3 research background and such, we were the ones that were  
4 really teaching the folks in those compliance teams about  
5 the kinds of issues -- there were lots of new issues --  
6 coming on the proxy that were increasingly financial in  
7 nature.

8 And you think about where we are today, and  
9 represented by the people sitting at this table from the  
10 institutional side, how far things have come since 2003,  
11 where proxy voting is now a strategic part of what is  
12 being done at investors involving people across the  
13 organization. I mean, compliance still plays a role  
14 there, but it's definitely not the same kind of  
15 significant role it played before.

16 So we start with -- when we develop our policies, we  
17 have market-specific policies, and we consider the local  
18 laws, regulations, and listing rules for those given  
19 markets. And then we take into consideration, in  
20 addition to that, as we -- we started off with that.

21 And then you start to look at sector-specific  
22 matters. So there were things that are perhaps -- I was  
23 thinking -- I thought of an example but I can't remember  
24 all the details on it.

25 But I remember when we were having some issues,

1 getting some feedback from some Refits about our sound pay  
2 analysis and the data that we were using to drive that  
3 sound pay analysis. And it was really clear that we had  
4 to change the model to create a specific model for Refits  
5 that was different than the model that we were using for  
6 other sectors.

7 So we take into consideration the sector. We also  
8 take into consideration the size and the maturity of the  
9 company. So there are very -- I think in Canada, for  
10 example, I think we have three or four different  
11 policies, and a lot of it has to do with the size of the  
12 company.

13 And as it relates to how we update the policies on  
14 an annual basis, we don't do a consultation, but we do  
15 have our policies open for public comment throughout the  
16 year. And we reach out.

17 Probably the biggest change that's happened in the  
18 15 years since we started Glass Lewis is that when we  
19 started Glass Lewis, we also were a total black box to  
20 the companies that we were covering, and we didn't engage  
21 with companies. We took that hard line; it's a way to  
22 further manage potential conflicts of interest.

23 But now we have a policy of connecting and engaging  
24 with companies for free outside the solicitation period.

25 So I think there were something like -- there were

1 actually find a lot of this on our website. It's not  
2 only our clients but issuers and others around the world.

3 We collect all that information. We also host a  
4 number of roundtables and what we call "fall briefings,"  
5 where we literally go to various cities, not only in the  
6 United States but around the world, and have frank and  
7 open conversations with the institutional shareholders  
8 that essentially represent the vast majority of the  
9 equity holdings around the world.

10 And we listen to what the issues are that they are  
11 facing, what matters to them, what has changed this year  
12 versus in the prior year. And we incorporate all that  
13 into our policy development process.

14 We have a global policy committee that is chaired by  
15 our global head of research. That is based, actually,  
16 just up the road here, in Rockville, Maryland. And that  
17 committee spends a great deal of time in trying to  
18 summarize and incorporate into the policies everything  
19 that they've heard.

20 So we try to be very market-centric with regards to  
21 what we hear from many of our consistencies. But we also  
22 include issues and policies that we believe are important  
23 that we are hearing that are worthy of consideration.

24 We actually -- just take Glass Lewis. We have a  
25 comment period, so we put these out for comment, and that

1 literally 20,000 outreaches to public companies globally,  
2 providing information on our policies, seeking feedback,  
3 also reminding them that we're open to meeting with  
4 companies outside the solicitation period if they want to  
5 call and talk about things and set up a meeting. And we  
6 did about -- we're probably on track to do about 3,000 of  
7 those meetings with companies this year.

8 So that feedback from companies from that engagement  
9 is also a big part of the process that we use to update  
10 our policies annually. And of course we're engaging with  
11 our clients as well, and we just finished our annual --  
12 what we call the mutual fund roundtable, which is really  
13 the big asset manager roundtable. We bring institutions  
14 in together to talk about policy.

15 MR. CELLUPICA: Gary?

16 MR. RETELNY: This is a part of what ISS does, that  
17 we put not only great value but a tremendous amount of  
18 time and attention on. And we have a policy development  
19 process that is pretty well-established and I think  
20 somewhat familiar would many people who ISS over the  
21 years. So I'll be brief in case you have questions  
22 specifically on parts of it.

23 Essentially, some time in July, in August, we issue  
24 and send a very large number of surveys to various  
25 constituencies. Anybody can participate. You can

1 comment period is open for a few weeks. I think this  
2 takes us some time into October. We get those comments  
3 back. Again, all during this time we're incorporating  
4 whatever we think is appropriate in our policy  
5 formulation.

6 We're very careful when we do this that we don't  
7 take dramatic steps and changes in policy. We understand  
8 that this has impact on the issuers as well as on the  
9 institutional investor community. Some time in November,  
10 and actually I think it's this Friday, meaning tomorrow,  
11 we finalize our policies, changes in policy, that will  
12 then be applicable February 1st of next year, 2019.

13 So it's a fairly robust and detailed process that we  
14 follow that takes quite a bit of time. We have about 4-  
15 to 500 participants that respond to the survey, so  
16 participate in the roundtables, or that we hear from.  
17 And we do hear from many constituencies who have strong  
18 disagreements with a number of the policies that we have in  
19 place.

20 MS. RABIN: Yes. I want to add one thing, and I  
21 just want to underscore what Gary said about putting --  
22 when we update a policy and we're putting something out  
23 there that is different and likely to be potentially  
24 controversial for companies, we will telegraph that for a  
25 year, maybe even longer.

1 But we will telegraph that we are looking at this  
2 issue -- for example, board diversity and the number --  
3 if a company doesn't have at least one underrepresented  
4 gender person on the board. So we will telegraph that  
5 because, like what Gary said, we don't want something --  
6 we want companies to be prepared and to be able to ask  
7 questions and for us to be able to be thoughtful when we  
8 roll that out.

9 MR. CELLUPICA: Thank you. And so I want to  
10 recognize Senator Gramm, and then maybe get our issuers'  
11 perspective on the policies and recommendations developed  
12 by proxy advisory firms, and to what extent you feel like  
13 you have sufficient detail in those recommendations to  
14 prepare responses.

15 SENATOR GRAMM: Well, first of all, thank you for  
16 recognizing me. There's a point I want to make about  
17 conflict of interest that's a little bit different, but I  
18 guess this is as close to it we're going to get the  
19 panel. It's a good time to make it.

20 In the Enlightenment, we saw a flourishing of the  
21 idea that people ought to be free to follow their  
22 conscience in their beliefs and in their religion, and  
23 follow their interest in using the fruits of their labor.

24  
25 The Parliament in Britain and in Holland set up the

1 the shareholder.

2 Proxy advisors don't own these shares. Investment  
3 advisors don't own these shares. So the conflict of  
4 interest is, when you get put down as being part of the  
5 Flat Earth group, if you don't support a series of social  
6 reforms, you are going to see your decisions affect the  
7 marketability of your product whether you're an index  
8 fund or whether you're a proxy advisor.

9 And what happens to the company and to its  
10 shareholders is relatively minor in importance to your  
11 profitability. But how you're perceived socially can be  
12 a great source of access to funds. This is a very real  
13 conflict of interest.

14 And it seems to me that again, as index funds  
15 especially get bigger, this going to become more and more  
16 important, and you've got a real question. If the  
17 Congress or the state legislatures or the courts or the  
18 Executive Branch of government is not willing to force  
19 companies to do something, should we have special  
20 interest groups force them, and use the power of public  
21 opinion to do it?

22 Well, if we're going to do it, we're undoing the  
23 Enlightenment. We're going back to the Middle Ages,  
24 where these social pressures created leeches that  
25 literally bled business and stopped growth. And I think

1 corporate structure to allow companies to develop  
2 policies based on the interest of the shareholder  
3 independent of the Crown, independent of the Guild,  
4 independent of the village, and independent of sort of  
5 social convention. And in that environment where wealth  
6 served the owner of the wealth, we created prosperity  
7 beyond the world's imagination at the time, and to some  
8 degree we're doing it today.

9 The conflict I'm worried about -- and in that  
10 Enlightenment, a decision was made that the Parliament  
11 would decide on constraint in setting the law, not the  
12 Crown, not the community, not social pressure. And so if  
13 people had values, they would come to the Parliament and  
14 they would make argument for those values.

15 Now, what we are seeing today, and the source of  
16 conflict of interest I'm concerned about, is not that  
17 people don't disclose. I don't think that's the problem.  
18 I think the problem is the real conflict of interest is  
19 something they would never think of disclosing, and that  
20 is, we have organized special interest groups that are  
21 trying to impose policies on corporate America that they  
22 cannot get adoption in the legislature, they can't get  
23 adopted in the Executive Branch, they can't prevail on in  
24 the courts. And so they use intimidation to force  
25 companies into policies that are not in the interest of

1 this is a really big issue.

2 And again, I go back to the conflict of interest.  
3 Why, if you follow advisor under policy that existed  
4 before you withdrew these letters that may still exist,  
5 then you get a safe harbor from fiduciary responsibility  
6 -- well, what do you expect people to do?

7 You create a set of incentives. They respond to it.  
8 And again, I think the movement, at least in withdrawing  
9 the letters, is an important step toward nobody should be  
10 exempt from fiduciary responsibility. If you're handling  
11 somebody else's money, there is always a potential source  
12 of conflict. Spending money is great, but spending  
13 somebody else's money, that's wonderful. And it's  
14 something that society has to protect itself from.

15 Your duty at the SEC is protecting that society.  
16 It's your responsibility. And I really urge you to look  
17 at these issues. These are big-time issues that threaten  
18 the competitiveness of American business. And if we  
19 don't do something about it, we're going to end up with  
20 people trying to flee the corporate structure. We're  
21 going to impede their ability to raise capital. We are  
22 going to affect economic growth.

23 And these are things no one would ever disclose.  
24 These are things that some people don't even see as a  
25 conflict of interest. But if I invest in a company or

1 invest in your index because it's my retirement and I  
2 want the highest possible return, I don't want somebody  
3 else playing politics with my money. And I expect the  
4 SEC to protect me.

5 If somebody wants to do these things, if they want  
6 to promote environmentalism or if they want to dictate  
7 who's on boards to meet some social quota, wonderful.  
8 Let them invest in funds that are going to promote social  
9 good.

10 But the world is full of ideas. The subprime crisis  
11 was part of this. What gave rise to the Enlightenment  
12 economically was the South Sea bubble, which was a  
13 situation where political influential created corruption.

14 And Parliament reacted to it. So that, I think, is the  
15 real concern.

16 MR. CELLUPICA: Okay. Thank you. Hold that thought  
17 on regulatory change and the role of the SEC and giving  
18 rise to this ecosystem, if you will. I do want to make  
19 sure our issuers have a chance to give their views on  
20 transparency of proxy advisory firms' recommendations.

21 And I guess in connection with that, are there  
22 additional steps that should be taken from a regulatory  
23 standpoint to increase or improve transparency about the  
24 application of proxy voting guidelines?

25 MR. KOKAS: Sure. Thanks. Thanks, Paul.

1 from a small to mid-market cap company, filing SEC  
2 solicitation materials or doing other things to try to  
3 correct the record are very difficult.

4 So one thing I did just want to note is, as a  
5 suggestion and as a consideration, is there a way without  
6 legislation to consider a more iterative process prior to  
7 the report being issued?

8 By way of example, a company like Atlas Air is a  
9 company that does not receive the proxy advisory firm  
10 report in advance of it being published. Large cap  
11 companies, my understanding is, do. I don't know because  
12 I've never seen one in advance. I don't know how  
13 impactful it is to receive that report in advance or not.  
14 I think every public company should receive the report  
15 in advance if some do. That's one example.

16 Another example when you have that is some way to  
17 correct errors. I will say I understand the challenges  
18 of resources, and I do appreciate the comments of fellow  
19 folks on this panel that are investment advisors or  
20 institutions, and even using the information just a data  
21 gathering or intelligence is a worthy cause.

22 But when it directly impacts a recommendation and  
23 then certain institutions, oftentimes smaller, quants,  
24 things of that nature, directly vote based on those  
25 recommendations, I think it's imperative to have an

1 So a couple things. I do think that related to the  
2 policies of the proxy advisory firms, as Gary and KT were  
3 describing, it is a thorough process. And typically, at  
4 least some of the items are more cutting-edge items of  
5 importance and interest, I think, to the broader  
6 marketplace, such as gender diversity, as noted, the  
7 concept of over-boarding and our board members on too  
8 many public company boards, et cetera.

9 Those kinds of things are out there, and they're  
10 known. So a company, an issuer, can react to them and  
11 know that if I have a board member that's on more than  
12 four public company boards, the head of the nom and gov  
13 committee get a negative recommendation; or starting this  
14 year or in subsequent years, not only from a proxy  
15 advisory firm perspective but many institutions as well,  
16 find these things of importance, as do public companies,  
17 knowing that if we're not looking to diversify our board  
18 of directors, again it may be a negative recommendation  
19 against a board member more broadly.

20 What I do want to note, just in the interest of  
21 time, is kind of a broader concept. And that is for all  
22 of these things related to proxy advisory firm reports  
23 and voting, there's a before and there's an after. So  
24 once the report is issued, it is an uphill battle, to say  
25 the least, from a public company perspective, certainly

1 opportunity before the report comes out to make sure that  
2 it's correct.

3 And for us, for Atlas, we have had circumstances  
4 where we've had material errors, and they have directly  
5 impacted the recommendation. So broadly speaking, again,  
6 I think there are lots of good things here and lots of  
7 goodness in the policies, I think just a lot of  
8 transparency.

9 I would encourage trying to find a constructive  
10 solution where we can do more before the report is  
11 issued, treating all companies the same and some other  
12 process where at least we make sure that it's correct,  
13 whether or not we may agree with the recommendation.

14 MR. CELLUPICA: KT?

15 MS. RABIN: So I'm going to address -- I was really  
16 excited to learn of the two companies that were going to  
17 be joining us on this panel because these two companies -  
18 - and I don't know for sure whether -- I know that in the  
19 case of Atlas Air, I think you've you've been in our  
20 offices.

21 And I'm not sure in your case whether you've  
22 actually been in the office, but your team has, so that  
23 we've been engaging. I pulled up the -- in the case of  
24 GM, we've engaged with GM a couple of times over the last  
25 few years.

1 And GM as well as Atlas Air are both subscribers to  
2 what we call the Issuer Data Report, which we created in  
3 conjunction with the Society. And in fact I asked Darla  
4 to point me to the person responsible for the small cap  
5 and mid cap committee because that's a group of companies  
6 that has the least amount of resources. And so we  
7 thought it would be good to work with them in developing  
8 this.

9 And what it is it's a data-only vision of the  
10 report. It doesn't include our opinions or the analysis,  
11 but it includes all the data that we use in making those  
12 opinions. And of course, the policies are available up  
13 on our public website.

14 And we make that available to any company in the  
15 world in advance of our completing our analysis. And it  
16 it happens pretty early in the process, which is good,  
17 because I know if you're doing it too late, I think that  
18 companies are scrambling to deal with votes that have  
19 come out, and they're trying to engage with shareholders.

20 We do not make the full report available to any  
21 company until after we've published it to our investor  
22 clients. And like our investor clients, companies that  
23 want to buy the report, want the report, have to pay for  
24 it. And there's a very transparent fee schedule for that  
25 that's rationalized based on the size of the company.

1 But I do think that we definitely took it to heart  
2 that companies were scrambling to deal with issues where  
3 there were some potential factual inaccuracies in our  
4 report. And so we created this service, which is free  
5 for any company. And once they sign up for it, we just  
6 keep sending it to them every year even if they don't  
7 call and ask for it for the next season.

8 And I think that that has been extremely helpful, I  
9 hope, for us and certainly for our clients to get those  
10 things addressed before we get the analysis done.

11 MR. CELLUPICA: Gary?

12 MR. RETELNY: First, just a couple of comments on  
13 what Adam has said. I think he raises some really good  
14 points that we think about all the time. It is  
15 unacceptable for an error not to be corrected, period,  
16 end of story. It has to be corrected.

17 Now, how it happens, when it happens, whether in  
18 fact it is an error or not or if it's a difference of  
19 opinion, is a whole different issue. So I know we can  
20 spend a whole panel on whether it's a difference of  
21 opinion or an error. But if there is an error, it needs  
22 to be corrected.

23 ISS corrects all errors of fact in our reports. Now,  
24 when do we correct it? We can talk about that as well.  
25 Adam is also correct we distribute prior to publishing

1 our final report, our draft report to the S&P 500  
2 generally and other large global companies. We do not do  
3 it for everyone. We can talk about that as well, but  
4 I'll give you just two quick notes on it.

5 One is, these are the largest companies in the  
6 world, and they are the ones that are widely held,  
7 particularly in the United States. So it is important to  
8 make sure that we get that in place quickly. That's  
9 number one.

10 And two, you might not believe this, but many of our  
11 clients do not like us sharing our report with issuers  
12 prior to them seeing it. They want to be the first ones  
13 to see it. So there is a tension there between sharing  
14 the report itself with the issuer prior to sending it to  
15 the ones that actually pay for it. Right? Our clients  
16 are the ones that actually pay for us doing this work.

17 So we try to strike a balance. With regards to  
18 those that we do not send, prior to publication, the  
19 report, and I believe Adam's firm, Atlas, is in that  
20 group, we distribute upon request, for free, the report  
21 to them as well.

22 And when we do that and they come back with errors  
23 in those reports, we correct them immediately. And the  
24 way we correct them depends on what the error is. So  
25 assuming it's a factual error, and assuming that it would

1 lead to a change of recommendation, we change the  
2 recommendation.

3 And actually, what we do then is that we issue an  
4 alert that goes to all the clients that own that security  
5 that highlights that the recommendation has been changed,  
6 an error has been fixed, and gives the detail of that.  
7 And we do it prior to them having to submit the final  
8 vote.

9 The other point that I would make is think  
10 logistics. Investors, and we've heard from some here,  
11 including Rakhi, cover thousands of securities during  
12 proxy season that they need to vote on. So efficiency is  
13 extremely important.

14 And part of the reason why you don't want to  
15 distribute thousands of reports and wait for comment is  
16 because it slows down the process significantly. And we  
17 want to make sure that clients get the information they  
18 need to perform essentially their fiduciary duty -- that  
19 we are subject to as a registered investment advisor as  
20 well -- to make sure they get it in time to be able to  
21 use that information.

22 So there's always a balance there that we're trying  
23 to finesse. But we are always going to correct a factual  
24 error in a report once it comes to our attention.

25 MS. RABIN: I didn't mention that. We have the same

1 policy. And it goes -- for those of you who don't know  
2 me, you may -- I'm an ex-journalist. So if you think  
3 about it, even after a story appears in the paper and a  
4 factual error has been identified that needs to be  
5 corrected, they will publish -- the newspaper will  
6 publish that error.

7 If it's very -- I can't think of an instance. But  
8 if a company brought a factual error to our attention  
9 after the meeting passed, we would update that report to  
10 reflect that there was an error in the report.

11 And even if that didn't change our analysis; because  
12 of course that report is being used by clients even if  
13 it's past the meeting date; its part of the data set and  
14 the information set they use as they're preparing for  
15 engagements with that company during the off-season and  
16 preparing for the next year.

17 MR. CELLUPICA: Okay. John, I want to make sure you  
18 have a chance to weigh in here, and then quickly Scot and  
19 Patti, if you have anything to add.

20 MR. KIM: So just real quick, to go back to the  
21 issue of transparency around guidelines and methodologies  
22 -- and Adam hit this point, but I want to make another  
23 point, which is, when we're talking about board  
24 diversity, when we're talking about independent chair,  
25 things that are these issues that come up from time to

1 opportunity, if there was a sort of unique proposal, just  
2 to get -- whether it's ten minutes of 15 minutes to  
3 discuss our perspective on an issue.

4 If you folks were here for the last panel, I think  
5 from a board and a corporate secretary perspective, when  
6 we get a proposal, we do take it really seriously. The  
7 board debates it. We do spend a lot of time and a lot of  
8 thought on engaging with shareholders and preparing a  
9 response.

10 And we have that opportunity to talk to the  
11 proportionate, but we don't always have that opportunity  
12 to speak to the proxy advisory firms. And so who knows  
13 if there was an opportunity to point to disclosure in our  
14 sustainability report or another place, that might be  
15 helpful just to have that opportunity.

16 And by the way, they could ignore us. And to the  
17 folks that have talked on this point, we get it. There's  
18 a conflict with the proxy advisory firm spending too much  
19 time with the issuers that they're covering.

20 But those are the issues that I think about. And  
21 again, just to circle back, to the extent there were  
22 rules of the road, it might be helpful to just get  
23 everyone comfortable with, this is the process. We're  
24 going to let it play out and then see where we land,  
25 rather than, I think, an ad hoc process where maybe some

1 time, I think we do know where ISS and, frankly, our  
2 asset managers stand on those issues.

3 I think where you see management teams and boards  
4 struggle is when you get a bespoke issue of first  
5 impression shareholder proposal. And then it's not so  
6 clear necessarily what might be persuasive to the proxy  
7 advisory firms.

8 And so I think that is part of what drives -- let's  
9 call it -- when we think about review and accuracy of  
10 reports, maybe the more subjective issues, where I think  
11 we're all lined on black and while issues. Burn rate.  
12 Directors, we all want to fix that in the reports.

13 But I think where issuers run into trouble is we get  
14 this new issue. We're not exactly sure where the proxy  
15 advisory firms are on it. And to KT's point, I think,  
16 the proxy advisory firms are always there to pick up the  
17 phone in the off season and talk about these things from  
18 an engagement perspective.

19 But if you get thee proposal during the season,  
20 there may not be an opportunity to talk about this very  
21 specific thing. And so that's a place where -- I'm just  
22 throwing this out there -- whether there was a more  
23 defined review process where issuers got more time to  
24 review and that was defined from the outset so everyone  
25 knew the rules of the road, that maybe there's an

1 companies get an opportunity, some don't, that sort of  
2 thing.

3 And that's not really GM's specific. That's just me  
4 on my own just looking at the ecosphere and thinking, how  
5 could we make it feel like it works for everybody?  
6 Because again, I think we all are aligned. But we may  
7 disagree at the end of the day, but we all want accurate  
8 reports and everyone making an informed decision.

9 MR. CELLUPICA: Very quickly, Scot or Patti or  
10 Jonathan, if you have anything to add.

11 MS. BRAMMER: I just wanted to speak from the  
12 institutional investor viewpoint and say that no matter  
13 how good a proxy advisory firm is, there are likely  
14 things that are going to happen.

15 And our experience -- we've had two such occasions,  
16 one where we found an error, a name of a director. And  
17 we brought that to the attention of our proxy advisor,  
18 and it was immediately corrected and republished.

19 And the second was the application of our policy,  
20 and specifically using our definition of director  
21 independence. That was a very collaborative process with  
22 our proxy advisory firm that had a very positive outcome.

23 And I am hearing here that there are options for  
24 issuers to have access to data. So that is definitely a  
25 positive.

1 In terms of whether additional regulation is needed,  
2 I would just offer, it has not been our experience that  
3 there's a compelling need for additional regulation.  
4 That being said, if that's a path that's pursued, we  
5 would just respectfully ask that there be consideration  
6 given to making sure that there are increased costs or a  
7 compressed time frame for folks to review research, or a  
8 diminished independence of that research as a result of  
9 any additional regulation that comes out.

10 Anything that increases our administrative costs  
11 takes away directly from Ohio's public employees and  
12 retirees. So that's a very real concern to us because  
13 our fiduciary is, first and foremost, to them and  
14 their best interests. Thank you.

15 MR. BAILEY: Id just add that I think there's a very  
16 important distinction to be made between objective  
17 factual errors and subjective interpretation and policy.

18 And we find a small, very small, number of objective  
19 factual errors, and we think those are dealt with and  
20 need to be dealt with.

21 We're always willing to talk to and we encourage  
22 dialogue with the companies that we invest in on those  
23 subjective interpretations. And we have those dialogues.

24 We supported GM's chair to remain in a position against  
25 the view of Glass Lewis last time around, for example.

1 So that dialogue can happen directly. So I think  
2 that that's really where it needs to go, and that door is  
3 always open.

4 MS. ANDERSON: Jonathan, how do you even become  
5 aware of any disputes about the recommendation in the  
6 first place?

7 MR. BAILEY: Companies come and talk to us. We hear  
8 from them. Right? Because we're talking to -- we do  
9 1,500 meetings with companies in our offices each year.

10 Our analysts are engaged with them. Where there are  
11 these complicated, more subjective situations, companies  
12 will reach out to us.

13 And also, to be honest, we read the fundamental  
14 proxy filings ourselves. So where there are things that  
15 are likely to be contentious, our analysts and portfolio  
16 managers are aware of them and are able to put that in  
17 the context of the investment case, the time horizon, why  
18 we have decided to own this company, and the track record  
19 of the management team and the board.

20 So I think it's very rare that something slips  
21 through that we haven't heard from the company about if  
22 it's material.

23 MR. DRAEGER: So just quickly, I want to say I find  
24 Adam and John's comments both very thoughtful. And I  
25 don't see any reason why, from the industry perspective,

1 if it's operationally feasible, more opportunities should  
2 be created for issuer communication during the key  
3 period.

4 So I really appreciated the Senator's history and  
5 the philosophy about the considerations of public  
6 influence on corporate governance, and the appropriate  
7 scope of that.

8 I do just want to add a little bit of levity to it,  
9 though, with a practical example because, once again, I  
10 just want to highlight that contested shareholder  
11 proposals are a de minimis element of the overall  
12 balloted issues that are voted.

13 And so I wouldn't want to see the Commission or the  
14 Staff head down a path where an RAA's ability,  
15 supplemented by its own diligence, to rely on the  
16 research that's being provided by a proxy advisory firm  
17 was curtailed because we're worried about contested  
18 shareholder proposals because I think that would be tail  
19 wagging the dog from a regulatory perspective. And it  
20 would do so at the result of driving costs for advisors  
21 up substantially in the context of their diligence.

22 MS. ANDERSON: Rakhi, we'll turn to you, and then  
23 Adam next.

24 MS. KUMAR: I just wanted to address John's comment  
25 about when there are new issues because what he should be

1 worrying about or concerned about is how investors are  
2 going to be reacting to that issue, not how proxy  
3 advisors are going to be addressing these issues.

4 And as an index investor, I can tell you we take our  
5 time before we have an opinion. Right? The reason we  
6 take our time is because Senator Gramm's right. It's not  
7 about values. It's about value and how that issue is  
8 actually going to be impacting long-term value. How does  
9 the risk manifest itself?

10 And it's only after we see that do we actually start  
11 engaging and taking voting action and giving an opinion.  
12 And that's why -- and it's not just us. It's companies.

13 That's why you're seeing Sean's companies investing in  
14 scenario planning around changing climates, because they  
15 want to ensure that they have priced the risk correctly  
16 of a hurricane impacting a hog farm which is situated in  
17 North Carolina.

18 They want to ensure that. And some of them want to  
19 ensure that they are actually giving one year's maternity  
20 leave to attract the right talent because it's all about  
21 the value that all these issues are actually creating in  
22 portfolio companies.

23 So if, in Senator Gramm's words, thousands of  
24 retirees are disenfranchised of their vote because it  
25 interested us as index investors to exercise the vote on

1 their behalf, I think that's going to be very troubling  
2 for U.S. investors of our funds because we are all about  
3 ensuring that we look at sustainable long-term returns  
4 for the average American out there who's trusted us with  
5 their money.

6 MR. KOKAS: Thank you. So I want to strongly echo  
7 Rakhi's comments. And one thing I wanted to note earlier  
8 -- it's actually a good segue -- is Atlas Air has been  
9 doing shareholder outreach on-season and off-season for  
10 eight years. And that includes on-season and off-season  
11 virtually every year at State Street, among others.

12 Very thoughtful. I am amazed, with all the calls  
13 and the meetings you do that when folks come on the  
14 phone, they've read our proxy statement, clearly, and  
15 they're well aware of the issues. So it is not only very  
16 impressive and it's worth noting, but it's very  
17 refreshing with the time we spend.

18 That said, it's important to think about why we have  
19 a wide array of folks on the panel up here. So when our  
20 report comes out from proxy advisory firms -- and it's  
21 not robo-voting at all; shareholders have their own  
22 policies -- within a day or so of the report coming out,  
23 depending on the firm, 30 to 45 percent of our shares are  
24 voted within 24 to 48 hours.

25 So I care deeply about the shareholders. I care

1 done. And I think the front end part of it is equally  
2 important to the back end after the report comes out.  
3 Thank you.

4 MR. CELLUPICA: KT, and Senator Gramm.

5 MS. RABIN: So I want to speak about the correlation  
6 versus causation. I've heard that statistic of the  
7 percent of votes that get cast within a 24-, 48-hour  
8 period. I think the number is more like 48 hours, from  
9 proxy advisors publish their recommendations.

10 And I think it represents a really big  
11 misunderstanding of the process that proxy advisors go  
12 through because speaking for Glass Lewis, and I think I  
13 have a pretty good idea about what's happening at ISS as  
14 well, is that when we publish our proxy research reports  
15 that contain our recommendations, we're also publishing  
16 and implementing the custom policies of our clients.

17 And if you think about it, there are only three ways  
18 to vote -- well, actually four if you include the sound  
19 pay frequency. Right? But typically it's for, against,  
20 and abstain. And so I think what happens -- and there  
21 could be myriad reasons, to be honest, that an investor  
22 may select to vote for, against, or abstain.

23 And I say this: If I had \$10 for every time one of  
24 my clients or an investor like Rakhi said to me, "Right  
25 recommendation, wrong rationale," I could take us all

1 deeply about State Street's policies. And I want to  
2 spend the time and effort to prepare for each of these  
3 calls and meetings and hear from them, focus on that  
4 disclosure, hear what they have to say, take it into  
5 account, report it to the board of directors, and make  
6 changes as appropriate that the board decides.

7 That said, for a company of our size, it is a  
8 meaningful event when the report comes out. And I was  
9 just -- back to my earlier point about the before and  
10 after part. And I do agree that there is a lot of time  
11 and effort spent within the proxy advisory firms  
12 correcting errors. The issuer data report has made a big  
13 difference.

14 But if you are public company setting your executive  
15 compensation, you don't typically change half your peers  
16 on an annual basis to determine the pay of your NEOs.  
17 You may not change the pay for several years. I  
18 oftentimes see year to year that the peers used to  
19 compare my company's to others, half of them are  
20 different than the year before. And I find out who they  
21 are the day the report comes out.

22 So that does make make a difference. There's no way  
23 to know that in advance unless there is some publication  
24 of this. This is one of many issues. Again, I think a  
25 lot of good work is done here, but a lot more can be

1 across the street a bar and buy everybody in this room a  
2 drink after this meeting. Okay?

3 So I think that it is really important. It might  
4 make sense -- we talk when we meet with companies in the  
5 off-season about policy changes that we're doing and  
6 things that companies are thinking about implementing.

7 It might make sense, and I'm looking at Darla right  
8 now, to really do something -- maybe it's through the  
9 Society -- to really explain to people a little bit more  
10 about the process that we go through just technically so  
11 that you really get an understanding and a better  
12 appreciation of things because you're making assumptions  
13 about things based on things that you see happening  
14 without really understanding what's going on.

15 SENATOR GRAMM: Yes. Just in response to the  
16 comment about taking into account environmental factors  
17 and social factors, I think smart businesspeople look at  
18 those things, and when people are voting their own shares  
19 for those things, where they're going to be affected in  
20 terms of profitability by them, either positive or  
21 negative, then I applaud that.

22 I think the concern comes when other people are  
23 voting their shares and they're not going to be affected  
24 by the profitability of the decision that is made unless  
25 it in turn affects the marketability of their product.

1 That's where I become concerned. And I think anybody who  
2 pretends that there's not a huge conflict is simply  
3 deceiving themselves.

4 So I'm not against taking into account the impact of  
5 hog farming in North Carolina. But the legislature in  
6 North Carolina has the ability to take that into account.

7 And if people who own Smithfield shares want to take it  
8 into account, I think it's great.

9 What I object to is somebody voting their shares --  
10 that is, the people who own the stock, who invested their  
11 retirement in it -- with the goal of affecting hog  
12 farming in North Carolina on an environmental sense  
13 rather than trying to promote the long-term returns of  
14 Smithfield. I think that's the issue in a nutshell.

15 So it's not that these are irrelevant issues. It's  
16 that when somebody is voting on behalf of somebody else's  
17 money, and they in turn can be rewarded for that by  
18 people investing in their fund or doing business with  
19 their advisory company, then I think it's something that  
20 needs to be looked at. Thank you.

21 MR. CELLUPICA: Thank you.

22 So we'd like to start to wrap up with a couple  
23 questions about potential regulatory changes. So there  
24 have been some calls for further regulation of proxy  
25 advisory firms, for example, as Director Hinman alluded

1 to in his opening remarks.

2 The suggestion has been made for enhanced regulation  
3 of proxy advisory firms under the Investment Advisors  
4 Act, and would that enhanced regulation be appropriate?  
5 What would be the benefits and costs of such an approach?  
6

7 And maybe I'll start with the representatives of the  
8 proxy advisory firms, and then others can weigh in.

9 MS. RABIN: So Glass Lewis is not a registered  
10 investment advisor, as I think everybody in this room  
11 knows. And I'm not going to go into great detail, but if  
12 you look at the statement which I hope -- we did get it  
13 posted a bit late yesterday, but it's up on the website,  
14 and it includes a fairly detailed description from our  
15 counsel that I think does a good job explaining why that  
16 framework doesn't apply to us.

17 But I think I want to go back to 2010, after the  
18 consultation, the SEC consultation, on the proxy process.

19 The European Securities Markets Authority and the  
20 Canadian Securities Administrators both conducted  
21 consultations specifically on the proxy advisory  
22 industry.

23 And they actually both came out and published their  
24 conclusions. Both of them said, basically, proxy  
25 advisors do not present a risk to the capital markets,

1 and we do not see the need for binding or quasi-binding  
2 regulation. And what they proposed was the development  
3 by the industry of a code of conduct not unlike the CFA  
4 code of conduct for participants in the proxy advisory  
5 industry.

6 And Glass Lewis and ISS, along with the independent  
7 providers in the European market, created a group called  
8 the Best Practice Principles Group for Shareholder Voting  
9 Research -- it's kind of a mouthful -- and with the  
10 support and structure provided by ESMA, we created that  
11 code of conduct. And we apply that code of conduct  
12 globally.

13 And I'm not going to go into great detail about it  
14 now, but it covers all the issues that we've been talking  
15 about here today. And the thing I like about a code of  
16 conduct, if you think about the evolution of governance  
17 from a compliance function to what it is today, which is  
18 stewardship and strategic across the organizations that  
19 are sitting in this room and across the world, I find it  
20 hard to imagine that we could create a regulatory scheme  
21 which would put a box around what we're doing today that  
22 would be able to keep up with the things that no doubt  
23 will come down the line.

24 And I do think that the code of conduct, which  
25 initially was developed to be a "comply or explain" code

1 of conduct, and now as we're going through the third  
2 update, we've done a consultation, and we're about to go  
3 through the results of that consultation -- and I expect,  
4 coming out of that, that the code will evolve from a  
5 "comply or explain" to a "comply and apply" code. That's  
6 what I expect will come, so more teeth to it.

7 And I do think that with a code of conduct, we're  
8 able to stay on top of the things that are evolving in a  
9 way that I think regulation would be hard-pressed to do.

10 And I don't think that the Investment Advisory Act is  
11 the right framework for us.

12 MR. CELLUPICA: Gary?

13 MR. RETELNY: Yes. Thank you. We are a registered  
14 investment advisor. We believe that the right to vote a  
15 share is an asset that has significant value to  
16 institutional investors. We believe there is a duty of  
17 loyalty, a duty of care, and a fiduciary obligation,  
18 certainly on us as we work with our investor clients with  
19 regards to how they exercise that vote.

20 I do think that added regulation is not necessary.  
21 I think that it will add a significant amount of  
22 potential cost and will stress the logistics of the work  
23 flow that actually many institutional investors depend  
24 on.

25 So to the extent that there is additional

1 regulation, we do believe that the Investment Advisory  
2 Act is the appropriate means to accomplish it, although  
3 we don't think that additional regulation is necessary.

4 MS. ANDERSON: I can't believe. Is there anyone on  
5 the panel that thinks there should be additional  
6 regulation? I haven't heard it yet, and I'm kind of  
7 surprised.

8 MR. EGAN: I think it's my turn. Egan-Jones is an  
9 NRSRO, Nationally Recognized Statistical Rating  
10 Organization. My ex-partner said it was no-room standing  
11 room only.

12 Anyway, we're heavily regulated and so the  
13 additional regulation doesn't scare us. We've been  
14 dealing with it for a number of years. The bulk of it is  
15 beneficial, I think, to the market.

16 Our main concern is one of market access and the  
17 limitation of market choices. And right now you have a  
18 condition where that market access is restricted for a  
19 number of reasons. We tend to think that the analogy of  
20 the movie studios and the movie theaters is appropriate  
21 here, whereby the movie studios were forced to make  
22 adjustments so they didn't -- so that the theaters could  
23 show whatever movies they wanted to. And our view is  
24 that in this area, you have a problem of taking one  
25 oligopoly/monopoly and extending it to the other. I

1 leveled on that, which would hit the savers and investors  
2 on whose behalf we manage money.

3 And also, we worry about the impact that regulation  
4 might have on the timeliness and the independence of the  
5 resource and data aggregation work that is done by proxy  
6 advisory firms. If either of those were to be  
7 threatened, it would not help improve the quality of the  
8 decision-making, which ultimately is why we use this  
9 advice in the first place.

10 MR. DRAEGER: Yes. Very well said, Jonathan. I  
11 would just say on the cost front, for mid-sized and small  
12 asset management firms, 206(4)-6 doesn't mandate proxy  
13 voting. So it's already the case that many people, many  
14 RAAs in the industry, decide not to vote proxies, and  
15 that's largely based on the cost of doing so.

16 And so I'm agnostic as a consumer as to whether  
17 these proxy advisory firms have to register. But I would  
18 say that if there are things that are done that  
19 substantially increase the costs that are passed on to  
20 advisory firms without meaningful benefit, then it'll  
21 result in lower levels of engagement by retail investors  
22 and the Main Street investors because ultimately neither  
23 they nor their advisors will end up voting the proxies.  
24 So that's my point.

25 MR. CELLUPICA: Senator?

1 think that giving investors a choice is critical.

2 We respect Senator Gramm's views. The question is  
3 how to put them into practice, and how to police it, and  
4 the rest. And I tend to think that the answer is more  
5 choices. Right now there aren't many choices. You might  
6 say, well, that's because this is a complex, difficult  
7 business. Well, we've been doing it for the past 15  
8 years and it hasn't been a problem.

9 So our view is to make it -- you have two choices.  
10 One is to force an even playing field. The other one is  
11 to encourage it without the regulatory environment.  
12 Either way, you need more choices or else ultimately  
13 investors are going to get hurt.

14 MR. CELLUPICA: I want to make sure our investment  
15 advisors, as the clients of the proxy advisory firms,  
16 have a chance to share any thoughts on this.

17 MR. BAILEY: So we've made a more formal submission  
18 which lays this out in more detail. But our view is that  
19 the advice that we get from Glass Lewis and ISS is just  
20 one of many inputs into reaching our own independent  
21 decision, and so therefore it's not the primary advice  
22 and we don't feel that it needs to be regulated above and  
23 beyond what's currently taking place.

24 We also think that any regulation that is considered  
25 needs to bear in mind the additional cost that may be

1 SENATOR GRAMM: It seems to me that rather than  
2 requiring more registration, which will impede  
3 competition, that you can improve the situation by taking  
4 away safe harbors by making it clear that if you're  
5 investing somebody else's money or you're advising on  
6 investing their shares, you have a fiduciary  
7 responsibility that cannot be washed away, that cannot be  
8 safe harbored, that you're accountable. And I think  
9 that's something the SEC ought to do.

10 MR. CELLUPICA: Scot, I think you'd alluded to  
11 Advisors Act Rule 206(4)-6. So you're correct, it  
12 doesn't require investment advisors to vote all their  
13 proxies. But it does investment advisors to have  
14 policies and procedures with respect to proxy voting, and  
15 in some people's view it was a significant contributor to  
16 the current proxy voting ecosystem we have today.

17 Is that a rule that we should be revisiting or  
18 reviewing?

19 MR. DRAEGER: I would say no. I think it's a well-  
20 constructed rule. It's one that is well-understood by  
21 the advisory community. It's one that requires advisors  
22 who are voting proxies to develop policies and procedures  
23 that are reasonably designed to make sure that the votes  
24 made are in the best interests of their clients.

25 And I would add that Staff Legal Bulletin 20 was

1 very well perceived because it was helpful in flushing  
2 out what it really means to have reasonably designed  
3 policies in this regard and to what level those policies  
4 could incorporate, in addition to ones on diligence, some  
5 consideration of proxy advisory firm research. And  
6 particularly Q&A 3 through 5 were, I think, incredibly  
7 helpful. So I would advocate that no changes in that  
8 regard are needed.

9 And all advisory firms, I believe, already  
10 understand very well their fiduciary duty in the context  
11 of proxy voting; and I guess, once again, just to put  
12 some meat on the bones with a real-world example, even if  
13 we are in that very narrow circumstance where you're  
14 talking about a ballot that has a contested shareholder  
15 proposal.

16 And so how is it that an advisor would use a  
17 combination of their own diligence and the research from  
18 an advisory firm? So if you took an executive  
19 compensation issue, for instance, a pay for performance  
20 type of thing, the level of resources for a typical asset  
21 management firm to do their own diligence as compared to  
22 what might be offered by a proxy advisory firm would be  
23 very difficult.

24 I mean, when we look at these kinds of issues, we're  
25 getting research and reports from ISS that are based on

1 market-wide peer group alignment studies measured over  
2 years, ratio analysis to time-based equity performance on  
3 the stock that tie back to the compensation policies of  
4 the company, and all sorts of other detailed things that  
5 we would never have the resources to do on our own.

6 So when we receive that research, not only is it  
7 very helpful on how to vote, but what basis would we have  
8 to question, ultimately, that recommendation once we've  
9 satisfied ourselves with diligence that, wow, this is a  
10 very deep, thoughtful analysis?

11 And so to look at an asset management firm and say,  
12 no, you should be doing something more and different than  
13 what you're getting, would be completely impractical. So  
14 I'm saying that that's an admirable level of diligence to  
15 review that information and make a decision based off  
16 that. And you probably come to your own conclusion.

17 But correlation doesn't equal causation. If it  
18 seems thoughtful, then you take that path. So I guess  
19 that's a reasonable -- I wouldn't want to see Staff Legal  
20 Bulletin 20 changed or the existing rule changed because  
21 people design -- a whole industry has designed policies  
22 around the guidance that you've given, and it's good  
23 guidance.

24 MR. CELLUPICA: Okay. Adam, I think you wanted to  
25 weigh in?

1 MR. KOKAS: Sure. It is a bit of an imperfect  
2 structure and process, but it's the structure and process  
3 we have in terms of all of us at the table and how this  
4 whole process works. I think companies are better  
5 served. I think institutions are better served.

6 I think investment advisors are better served to  
7 have proxy advisory firms than not. And I think  
8 regulation could cause an increased cost that obviates  
9 the firms, which would not be the intention.

10 All that said, I think the worst outcome from today  
11 -- and again, I want to thank Chairman Clayton and the  
12 Commissioners for their leadership here -- is to come  
13 away from today's discussion and all the discussions and  
14 not have any changes or enhancements.

15 So if it's several months from now and everything is  
16 the same, then we probably should revisit some of the  
17 issues we're talking about in terms of legislation.

18 But if we take some of these things into account --  
19 because there are some chinks in the armor that I think  
20 can be addressed. There are many thoughtful submissions.

21 I'll again go back to the Society submission about some  
22 thoughtful ways -- when reports are issued, and other  
23 things that can be focused on in terms of solving  
24 disputes and ombudsmen and things of that nature.

25 But at the end of the day, I think we are better

1 served to continue to enhance the process over time and  
2 take all of this input into account. Thanks.

3 MS. ANDERSON: I want to acknowledge Commissioner  
4 Roisman, Senator Gramm, because it looks like he has a  
5 question. Or the Chairman. Sorry.

6 COMMISSIONER ROISMAN: I don't want to get you in  
7 trouble. Well, thank you all for this discussion. I'd  
8 say this is probably the most anticipated panel of the  
9 three panels. And there's lots of people here on the  
10 panel who have very strong opinions. There's also people  
11 in the crowd here as well as in the public.

12 And I encourage everyone to continue this dialogue  
13 through the comment file and provide us with facts and  
14 data because there has been a lot of emotion about this  
15 topic, but I'm not sure the data has always filtered  
16 through. So to the extent people can provide that, that  
17 would be very helpful.

18 I think one of the things I've heard today which I  
19 appreciated before but I appreciate again, it's the role  
20 and importance that these firms provide to asset  
21 managers. And Scot, I think you did a very good job  
22 explaining how they can provide you with data that  
23 necessarily would cause you to spend more time, money,  
24 and potentially even more than you can actually do given  
25 the resources.

1 I think that also goes to the issue of accuracy. So  
2 if you are relying heavily on these reports, it's  
3 important for these reports to be ultimately accurate.  
4 Personally, this rebuttal period, I think, sort of makes  
5 sense to me because I think if a company has a  
6 perspective that could potentially obviate the need for  
7 correction later, it might be beneficial to do so ahead  
8 of time.

9 Because as you said, you're voting on thousands of  
10 proxies. And once you vote, probably not much incentive  
11 to go back and look at something again once you're done  
12 with that. But I do want that to be something hopefully  
13 people comment again.

14 But again, thank you very much. I think this has  
15 been incredibly enlightening.

16 MS. ANDERSON: Chairman Clayton, please.

17 CHAIRMAN CLAYTON: No, others wanted to go. I'll  
18 make a comment at the end.

19 MR. GARLAND: I'll be brief. I think it would be  
20 helpful to clarify that funds don't have to cast a lot of  
21 proxy votes. I think that it is perfectly reasonable  
22 that a fund could decide on issues that it doesn't have  
23 enough information or on issues that may not be directly  
24 related to the performance of the company that it doesn't  
25 know enough about the preference of its investors to cast

1 SENATOR GRAMM: Let me just respond to that by  
2 saying if you know that, you can tell the investment  
3 firm, and then they can make the decision as to whether  
4 you really know it or not and whether it is in the  
5 interest of their clients.

6 But it seems to me perfectly reasonable that there  
7 are going to be cases where the firm will be legitimately  
8 in doubt, or where it has no idea on issues that aren't  
9 directly related to profitability, how its investors  
10 really stand on that issue.

11 And so clarifying that you have every right not to  
12 vote, it seems to me, is important, especially since it's  
13 not clear in the regulations that there's not pressure to  
14 vote. And I don't know that I buy the idea that we've  
15 got to have government tell people they ought to look out  
16 after their interest. It seems to me they're capable of  
17 doing that. And so I just don't buy your argument on  
18 that at all.

19 MR. EGAN: That's not a problem.

20 SENATOR GRAMM: I don't have to.

21 MR. EGAN: I'm not telling --

22 MR. CELLUPICA: With that, Chairman, do you want to  
23 make any final comments?

24 CHAIRMAN CLAYTON: I want to thank all of our  
25 panelists today, this panel and the two previous panels.

1 a vote.

2 And I think it would be very helpful to clarify that  
3 they're under no obligation to vote. They're not  
4 expected to vote unless they believe they're casting a  
5 vote in the interest of the people who invested the  
6 money. I think it would be helpful to do that.

7 MR. CELLUPICA: Sean?

8 MR. EGAN: If we don't have the encouragement for  
9 people that have a long-term vested interest in the  
10 outcome of these enterprises in the form of votes, then  
11 what oversight do you have? You basically run the risk  
12 of a professional class of executives running it for  
13 their own interest.

14 And so that's something that we have to watch out  
15 for over the long term. I tend to think that doesn't  
16 happen very often. It's once a year that you have at  
17 least a partial check on whether or not the ship is being  
18 steered properly.

19 And you hear countless examples of cases, and we see  
20 it all the time on our other business, where you know  
21 that the company could have been saved, it could have  
22 been protected, if there were some safeguards. And  
23 that's under the current system. So if you pull back a  
24 little bit from that, perhaps the Society won't be quite  
25 as well served.

1 I think it was a terrific day. Again, I think we want  
2 to have a system where we're getting high-quality voting  
3 interests of the beneficial owner. And that's kind of in  
4 the theme throughout today.

5 Please cast your comments in that regard. Tell us  
6 why it's going to improve the quality of the voting  
7 decision for the long-term investor. That's how I'd like  
8 to see the comments.

9 But again, thanks, everybody. Terrific. Thanks to  
10 the Division of Corporation Finance, the Division of  
11 Investment Management. Terrific work, as always. Thank  
12 you.

13 (Whereupon, at 5:00 p.m., the roundtable was  
14 concluded.)

15 \* \* \* \* \*

PROOFREADER'S CERTIFICATE

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In the Matter of: ROUNDTABLE ON PROXY PROCESS  
File Number: OS-1115  
Date: Thursday, November 15, 2018  
Location: Washington, D.C.

This is to certify that I, Christine Boyce  
(the undersigned), do hereby certify that the foregoing  
transcript is a complete, true and accurate transcription  
of all matters contained on the recorded proceedings of  
the investigative testimony.

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under my direction.

Date: 11/15/2018

Official Reporter: Kevin Carr



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