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OPENING REMARKS

CHAIRMAN COX: Good morning. I'd like to call this to order. We're running a bit behind schedule here and we want to stay tightly on a schedule this morning. I'll get started as people are still taking their seats.

Welcome everyone to the SEC's roundtable on proxy voting mechanics. This is our second roundtable on the proxy process this month and we'll have a third tomorrow. Today's roundtable takes us on a very different path from our last one on May 7th. At the last roundtable our panelists included several law professors and state court judges, and they discussed the relationship between the federal proxy rules and shareholders' state law rights.

Today we'll focus on how shareholders' legal rights are very closely connected to proxy voting mechanics. The right to vote on a merger or on a charter amendment, for example, means very little if the votes can't accurately be counted or if the process prevents some votes from being counted at all. Indeed, the effectiveness and efficiency of the proxy voting system directly affects whether shareholder rights under state law can be given full force and effect.

The first panel on today's roundtable is going to address and explain the shareholder ownership and voting
system in the context of two recent developments. The first is the increasing technological sophistication in the trading and settlement systems for securities transactions. United States trading and settlement systems are the most liquid and efficient in the world. But as these systems have developed and become more efficient some of the complexities around how trades are now processed, cleared and settled have given rise to challenges in processing proxies and led to problems of under-voting and over-voting of shares.

The second development is the increasing prevalence of beneficial stock ownership. The proxy distribution system currently used on the United States was designed decades ago when a majority of investors held physical security certificates and a minority held their securities positions in the name of one or more securities intermediaries.

Today, the opposite is true. Between 70 and 80 percent of all public company shares are now held in street name. As a result, companies don't know a significant percentage of their shareholder base. They have difficulty in identifying their beneficial owners, and they have to rely on a complex web of intermediaries to communicate with these beneficial owners and conduct proxy solicitations.

Understanding the effect of these two developments on the current shareholder ownership and voting system will help inform our views here at the Securities and Exchange
Commission as we develop our proposal to amend the proxy rules. Our speakers on this first panel are experts on the voting and solicitation process. They represent major broker dealers and key intermediaries. I look forward to their comments on these issues.

The second and third panels will address related issues. The second panel is going to focus on Rule 452 of the New York Stock Exchange, a rule which permits a broker to vote shares on routine matters if the beneficial owner of the shares has not provided the specific voting instructions to the broker at least 10 days before a scheduled meeting.

Because many beneficial owners do not regularly vote their shares, broker votes of uninstructed shares help companies reach a quorum at annual meetings of shareholders. The New York Stock Exchange has historically treated the uncontested election of a company's board of directors as a routine matter and eligible therefore for broker voting.

Over the past few years, the New York Stock Exchange has had to make increasingly controversial determinations as to what constituted a contest and therefore whether to permit a broker vote. For example, the New York Stock Exchange has determined that Just Vote No or Withhold Vote campaigns when there is no opposing director are in fact routine matters.

This has caused some concern by investor and
institutional groups, and in response to those concerns, the New York Stock Exchange formed a working group in April 2005 to review and make recommendations on its proxy voting rules. In June 2006, this working group recommended that the New York Stock Exchange add the uncontested election of directors as a non-routine matter under Rule 452. That would have the effect of eliminating broker discretionary voting with respect to all elections of directors.

The New York Stock Exchange supported this change, and this past October filed a proposal with the commission to eliminate broker discretionary voting on all elections of directors for shareholder meetings starting in 2008. The potential effect of this proposed rule on the cost of proxy solicitations as well as on shareholder vote totals could be significant, and the commission may need to consider the systemic effect of this proposal as we move forward on our proxy rule-making project.

I am pleased that members of the New York Stock Exchange Working Group are here today to discuss the NYSE's rule proposal and that other interested market participants, including smaller companies and investment companies are also here to discuss their views.

The third and last panel with focus on the shareholder communications system that was established by our Exchange Act rules more than 20 years ago. The panel
includes representatives from the business roundtable, broker dealers and proxy intermediaries who will discuss the pros and cons of today's system, in which companies can communicate with their beneficial owners only through the intermediaries who hold the shares in street name and may not communicate with the beneficial owners directly.

Many companies have objected to the fact that it's the intermediaries rather than the companies who choose the agent for distribution of the proxy materials even though the companies are responsible for the expense of that proxy distribution. I look forward to a lively discussion on these issues.

On behalf of the commissioners and the commission's staff I'd like to welcome our distinguished panelists and thank each of you for your participation in today's roundtable. We have benefitted and will continue to benefit from the knowledge, enthusiasm and willingness of various market constituencies and experts to look at all of these issues objectively and to work with the commission and our staff as we move forward on proposed solutions to these vexing problems.

So thanks very much, and I'll turn it over now to the moderators of our panel.

MR. WHITE: Thank you, Chairman Cox, and good morning. I'm John White, director of the Division of
Corporation Finance. And I am also very pleased to welcome all of you to the commission's roundtable on proxy voting mechanics.

I'm also very pleased to be joined today by Erik Sirri, the director of the Division of Market Regulation here at the moderator table. Erik, very pleased to have you here.

A couple of procedural matters before we get started. We have prepared a few questions for each panel, which are actually up on our web site if you'd like to see them from an audience standpoint. We also anticipate that the commissioners from time to time may have some questions, and we have asked our panelists to not present any formal opening statements today on any of the panels. Instead each of them, like each of you in the audience or listening on the webcast are welcome, in fact, encouraged to submit written statements and other materials for inclusion in the public comment file that we've established actually for all three of the roundtables that we're doing in this series.

I guess the final procedural matter, as each panel nears its close, we will end the discussion phase and then give each of you a minute or so to offer us any closing thoughts or suggestions that you'd like the commission to go away with in terms of closing thoughts. And also, just to ensure that the panels run smoothly we do ask that the panelists and the commissioners who wish to be
recognized -- if we don't see you signaling, you can turn
your tent card up on end and then we will in fact know for
sure that you would like to be recognized and we'll do the
best we can to call on you, not necessarily in order but
we'll try to call on all of you.

With that, Erik, I'll turn it over to you to get
started.

MR. SIRRI: Thank you, John. Good morning, Mr.
Chairman and commissioners. I want to thank everyone for
coming to the panel today, especially the esteemed members of
this morning's panel.

As Chairman Cox noted in his remarks, the world has
changed significantly since many of the regulations governing
proxy distribution and the processes used to distribute
proxies and the way that investor votes are collected. We
now live in a world where the vast majority of investors hold
the securities in street name. They are no longer record
holders but rather are beneficial holders.

The manner in which we clear and settle securities
transactions in this country is vital to the legal and
operational realities of securities ownership, so we're here
to ask questions about whether or not there are in fact any
problems in this area, how important those problems are and
what our options are for crafting an appropriate solution.

PANEL ONE - SHARE OWNERSHIP AND VOTING
MR. SIRRI: So we have a lot to cover this morning, so why don't we get started? To give us a common language, let me start with Larry Thompson.

In fact, let me introduce the panelists. Excuse me, I neglected that. We have six panelists here this morning. The first, on the audience's left, is Lydia Beebe, who is the corporate secretary and the chief governance officer of Chevron Corporation. On her left is Henry Hu, who is the Allan Shivers chair of law and banking and finance at the University of Texas. On his left is Rob O'Connor, who is a managing director at Morgan Stanley. On his left is Ronnie O'Neill, vice president at Merrill Lynch. On her left is Bob Schifellite, who is the president of the investor communications solutions group at BroadRidge Financial, which was formerly known as ADP. And on his left, finally is Larry Thompson, the general counsel of the Depository Trust and Clearing Corporation, DTCC.

All right. Now, why don't we get started? Larry, I wonder if you could kick us off. And just take a few moments if you would to talk about the following. You know, the vast majority of publicly traded shares in this country are held in street name. Why is that? What are the benefits of holding shares in street name and what role does a clearing agency such as yours play in the proxy voting process?
MR. THOMPSON: Erik, in order to get started it might be worthwhile just to sort of go through what the background is very briefly. DTCC is the principal holder of two of the major subsidiaries in the principal post trade infrastructure here in the U.S. for clearance and settlement, and that is the Depository Trust Company and the National Securities Clearing Corporation.

We hold and settle approximately 90, 95 percent of the equity markets here in the U.S. The catalyst for the development of those two principal depositories and clearing corporations was really a paperwork crisis that occurred in the 1960s. And that, as always, that burning platform, which caused all kinds of problems on Wall Street and for the financial services industry, led to major changes which are reflected today.

Back in those days, just to give you some sense of it, physical checks and certificates were still exchanged by hand in lower Manhattan. There was a sharp increase in trading, 15 million shares a day at the NYSE, that led to a growing number of fails, and those fails led to a growing number of failures of firms in the Wall Street area. It forced the markets to close on Wednesdays, with reduced trading hours, and it extended the settlement cycle from T plus four to T plus five. So there was a major problem that had to be solved.
There was an organization that was formed called BASIC, which was the Banking and Securities Industry Committee. To look into solutions, Congress got involved and the NYSE along with the banking industry came up with a number of solutions they thought to the problem. One of them was to come up with a central securities depository, DTC, where all of the securities would be immobilized so you would not have the physical transfer of money and shares on the streets.

The other one was to form NSCC to handle the balancing and the clearing of those securities through an organization called CNS, multilateral netting where essentially you would net down from all of those trades to a factor of about 98 percent. And that was done in 1976. DTC was formed in '73. NSCC was formed in 1976.

Congress got involved by passing a series of Securities Act amendments in 1975, which essentially promoted the unified national clearance and settlement systems. And the objectives were efficiency, competition, price transparency, best execution order and interoperability.

The CCPs and the CSD all led to those efficiencies and now in today’s marketplace what we have is that DTC is the custodian of approximately 85 percent of all of the equities here in the U.S. Approximately $36 trillion is held in our vaults or through our other intermediaries.
All of that is in our nominee named CDINCO. The stock is not re-registered and all of the movements take place through a book-entry system at DTC. It makes settlement faster and less expensive. Key thing here to remember is back when DTC was first formed it cost approximately 88 cents for a trade to be cleared and settled. That now is approximately two cents for that trade, and that doesn't take into account the inflationary factors. So as you can see there were real efficiencies that were grown out of that.

DTC is the record holder of all of those shares through CDINCO, and as I mentioned earlier. And as I said, all of that takes place electronically through our records. There are no identifiable shares that belong to any of our participants. The all belong to the name of CDINCO and when a deposit is made at DTC, just as it's made in your commercial bank, you don't know which dollar is yours, you have a proportionate interest in that dollar. So do all of our participants have a proportionate interest in the shares that we hold in our vaults and which we control.

And through them obviously the other beneficial holders would have just a proportionate interest. So there are no clear identifiable issues there at all.

The other thing that I think we want to talk about here is how the continuous net settlement system works and
why that brings such efficiencies to the U.S. marketplace.

The way it happens there is if you had 34 million trades, as
we approximately had last year, or 70 million total if you
look at it in terms of the slides, we will need to net down
that to a single figure on each side, either one buy or one
sell on each side of that trade.

That obviously adds tremendous liquidity to the
program. You don't have brokers and banks tying up their
capital into trades on a trade for trade basis. They can use
that capital to invest in other things, to have their
participant base get involved in the U.S. capital markets,
and that has led to the U.S. capital markets being as
competitive and as efficient as they are at the present time.

Again, the benefits of the CNS system, the central
fail control. All open fails are marked to the market. It
eliminates counter-party risk because NSCC sits in between
each one of the buyers and sellers. It becomes the buyer for
each seller and the seller for each one of the buyers, and
there are a minimal number of fees.

Because of this system, we have set a way in which
we interact with the issuers. As the record holder of all
positions, DTC receives all of the proxies, all of the
dividend payments and interest payments and reorganization
announcements, and we communicate that efficiently to all of
our participant base and to the issuers and/or their
representatives.

When we receive a proxy from the issuer, we send a -- we will get that, we will create a proxy and we'll send it to the broker dealer, which will list all of the shares that we have on record date. The holdings are in street name, but we in fact will develop it in such a way to make certain that on record date we receive all of the information.

So I'll give you an example. Twenty days before record date, DTC will receive information from the issuer, either through search cards, proxy statements, exchange bulletins, issuer letters or file transmissions sometimes from BroadRidge and other co-depositories. On record date we will capture all of the DTC participants and we will figure out which way the vote will go.

We'll capture all of the borrower information, all of the stock transfers, all of the tenders. We will create an omnibus proxy and a security position report, which will be provided to the issuer or its representative on record date plus one.

Again, going through it, we will get the information in from the exchanges, BroadRidge or the co-depositories. We'll put all of that together on record date. We'll put out an announcement to the street. We'll also send an omnibus proxy of all of those positions.
We, by the way, will make certain that that position is correct by balancing on a daily basis with each one of the transfer agents representing the issuer community. We then will send that information to the issuer or the issuer's representative and they will ensure that the vote on approximate basis will take place.

And Erik, that really goes through I think some of the mechanics of where we are and gives you some idea of where we are.

MR. SIRRI. Thanks very much for laying that out, Larry. I wonder if we could start the general discussion over on the far end there. I wonder if, Lydia, you would talk about the issuer's perspective here. How does this system work for you as an issuer?

MS. BEEBE: Well, I actually think Chairman Cox and your opening comments, Erik, talked about a lot of the issues that exist in the current system that I hope get addressed. I think from an issuer's perspective we work with the current system and we do our best to make it work, but we do have this very complicated system with a lot of different interacting and intertwined rules and each piece is kind of made assuming the other pieces so they all interact.

And so I guess my message would be that I do think the commission and the staff, you all have a very important opportunity here to address many of these issues before it
does become a significant problem. But I think it’s important to have a holistic approach.

I do think the voting system needs to ensure the integrity of the voting process. And Professor Hu has certainly been one of the key ones calling attention to the over-voting and is probably better able to talk about the specifics, but we do have technology today that enables tracking of voting rights, and I think we could do a lot to ensure that the people, that the voting process -- to improve the integrity of the voting process.

Our current voting system, and actually the basis of corporate America, is founded on the premise that economic interests -- people are voting. And we have a system now where the economic interest is not necessarily always connected with the people that vote.

And so I think at the very least the connection between the economic interest and the actual voting should be transparent. And so it should be apparent to all who is voting the shares. And I think there -- steps can be taken to improve the connection between the economic interest and those who actually vote.

You know, the retail investors were really kind of the key entity that the -- when the SEC was formed it was formed to protect the individual investor. And the retail investors are becoming increasingly minimized in our system
because the institutional investors certainly hold most of
the shares and they are much more organized and much more
diligent I think in voting their shares.

But I don't think that means we should further
marginalize the retail investor. And in some ways the broker
vote has been a substitute for the retail investor
representation in some ways. But retail investors do still
vote with their feet. And so if they don't like your
management or if they don't like your strategy, they can sell
those shares.

And so in some ways the actual voting, the
discretionary broker voting has not necessarily
misrepresented the underlying shareholders. But there are
difficulties for the issuers to work with those. The
NOBO/OBO system has certainly been mentioned. But we could
reverse that presumption or even get rid of that presumption.
I mean if you own real property it's certainly registered in
the courthouse.

There are countries that don't recognize that don't
recognize that OBO right and if you own a share it's just
public information or it's information available to the
issuer. And I think with the internet today we have a great
opportunity to communicate more directly with shareholders if
we had an opportunity to know more directly who they were.

And I guess the other area I might mention -- well,
I guess there's a couple things. The intermediation that we have -- I mean we have this system that I mentioned earlier and both Chairman Cox and you mentioned that we have all these interlocking pieces, but we have this intermediation system which creates some inefficiencies, redundancies, and I think from the issuer's point of view unnecessary costs. Other countries have used technology I think to introduce systems that substantially avoid the multilayer approach that we have in the United States today.

And we certainly have an opportunity to look at this. You might be able to reduce the gap between the record date and the actual meeting date substantially, which would help the voting integrity and the audit trails I think. And I guess the other area that I would suggest is the regulatory structure may need to create some oversight in areas of this process where we don't really have effective competition today.

And you know, certainly the broker voting and to some extent the proxy advisory services I would think fall into this category where we really do have these markets being dominated by strong players. And not to say that they're not efficient and don't do a good job, but you know, it's the issuers that pay a lot of this and we aren't the ones that buy the service.

And so there's no traditional market control that
we have in most of the areas of our free enterprise system. So that is another area that I think merits your consideration. So I think those would be the key areas that I think from an issuer perspective we would hope that you would give some serious thought to, and we would certainly be happy to participate in that process.

MR. SIRRI: Well, thank you, Lydia. You mentioned a number of things. In particular you mentioned the broker discretionary vote and the NOBO/OBO or objecting beneficial owner question. We have panelists following that are going to deal with those explicitly, so I could use a little bit of discretion and maybe treat those in the following panels.

You know, between what you said and what Larry started off with it's clear that the broker sits at the middle of this process, so I wonder if I could turn to our brokers. Rob, I wonder if you could perhaps start us off here and talk a little bit about the role that you play because we understand there are different policies and procedures that brokers put in place to deal with the question of beneficial owners. I wonder if you could talk about how your firm deals with that, and then Ronnie, I wondered if you could follow up.

MR. O'CONNOR: Thank you very much, Erik. I guess I would say you're right in that we do sit in the middle of the process. Picking up on comments by both Larry and Lydia
though, it's important to note -- and I think we started the
day with the chairman commenting that we have the most liquid
and efficient settlement system in the world. And Larry kind
of took us through how that works, and I think we can't lose
sight of that as we go through this discussion because
anything that we look at doing that would slow that down and
put us back in a daze, especially with the increase in volume
of trading since the 1960s, that would put us back there,
would raise some concerns.

Where do we sit in the middle of this process?
Larry explained that he'll look at what he has in the box as
of a record date, reconciling against movements, et cetera.
They're then going to go out to the various participants and
give us the number of shares that they have allocated to us
as of that particular record date. We then as a firm have to
decide how to allocate those shares out to our clients.

The first thing we would do is reconcile to see if
the number that DTCC is showing us is consistent with our
stock record as to our long holders as of that day. If there
is no discrepancy, then I think it's fairly straightforward
that everybody gets their vote. That's not an issue. If
there is some kind of deficiency, then firms need to approach
how they're going to reconcile that deficiency or how they're
going to allocate that deficiency.

And there are two primary ways you'll hear of doing
that and there's a few different versions of hybrids between
them. But there's pre-balancing and post-balancing. So
pre-balancing -- some people may refer to them as
pre-allocation and post-allocation. Pre-balancing involves
the broker looking at its record and allocating the shares
before it sends the cards out. So if you're a holder you'll
get a card for whatever number of votes you're actually going
to get. Post-balancing you may get a card that shows your
position because it very well may be likely that you can vote
the entirety of your position because certain people may not
return their cards.

Switching to pre-balancing for a second, we do a
version of pre-balancing, okay, and this is a recent
development. We feel that our clients are looking for some
greater transparency, some clarity on the number of shares
that we're getting. So what we've done is -- and we looked
at this long and hard and we had representatives on the
various NYSE committees, et cetera that looked into these
issues. We made a decision to make a switch to prebalancing.
So what we do though is we look at what our record date
position is, the number we get from Larry's firm, we then
look at the number of segregated clients that we have and all
clients who have segregated positions will get a card for the
number of shares they can vote.

So all fully paid voters, people who aren't running
any debits, haven't lent their shares out directly, those clients will get a card for their votes. We feel that it's highly unusual that we would actually have to -- even if there were a deficit in our -- position that we would have to do a post-balancing allocation. Based on some of the historical numbers we've looked at and the industry has looked at we think it's a highly unusual scenario, and therefore we think this is the most efficient way to address this point.

Then we look at clients who are running margin debits or who have unsegregated securities. And to the extent that we have excess that would be allocated among the unsegregated shares. So we kind of draw the line of those people who are fully paid, they're going to get first dibs, and those clients who are unsegregated will get a portion up to the entirety of their position of whatever is left over.

Firms that do post-balancing, okay, will essentially send the cards out and in the event that there's a need to do an allocation, they will do that allocation upon the return of votes. So that is really the distinction between pre-balancing and post-balancing. It's really a question of -- I think I heard somewhere earlier today, this concept of tracing, you know, marking a vote to a share. Well, there are a number of issues with that. I think that we have developed a system that efficiently does that at the
right place and time.

So do you do that from day one and you say that each share is somehow tagged with a number and has a vote to it, which I think creates a number of procedural issues and would probably make Larry's life very difficult or do you do that down the road? And when you do that down the road, as long as the broker has disclosed to his clients kind of how it's doing its process, to quote Lydia, the clients will vote with their feet.

The don't just do that by selling the issuer's shares, they do that by moving their accounts. If they're not happy with the way you're handling their account they're not going to be quiet about it. They'll let you know. And we are -- and Ronnie, I think would agree with this -- we're a client service business. And if we're not doing what our clients need then we've got an issue.

So we are constantly looking at better ways to fix this, but I think the way that we're doing it now is the appropriate intermediary role.

MS. O'NEILL: Rob, I would agree with everything that you said as far as the pre and the post. What we find is that most brokers who have primarily institutional shares, institutional clients, find the pre-balancing works to their advantage. Probably the main reason for that is that the institutional clients tend to vote regularly. They have
fiduciary responsibilities, so the vote returns on an institutional broker are rather high.

In my world, which would be a retail-based situation, most of the clients choose not to vote. We've looked at that from every angle trying to encourage people to vote. We think that a lot of the processes that BroadRidge and ADP have built into their systems have actually increased the vote returns over the years, but we don't know how to get people to actually care enough to vote.

Because so many people don't vote a post-balancing broker is going to take the votes that are returned and the great majority of the time is going to be able to accommodate every single person. In fact, at Merrill Lynch where I work we do -- less than one-third of one percent of the meetings have any kind of allocation at all to the folks who have a margin debit balance.

So for the most part the differences between pre- and post-balancing give you the same exact result, differences being when you have to make an allocation on the pre-balancing side and some of the people to whom you allocate shares don't vote. That causes one issue. And then the other issue is an issue that I may send out a proxy card for your full position and it turns out that you're going to be able to vote somewhat less.

That is disclosed both at the time of the client
agreement. It's also disclosed on the actual voting
instruction form that we mail out to all of our clients.

MR. SIRRI: So, Ronnie and Rob, the way I think
about what you just said is that you both have systems to
allocate the shares that will be voted. And Ronnie, in your
case you essentially let folks vote and then after the fact
you try and allocate if there's an over-vote. And Rob, the
way I understand what you said is you make a set of decisions
up front allocating first to the fully paid shareholders and
dealing with things after.

The sense I have from listening to both of you is
that the system is working pretty well. The sense I had a
little bit from listening to Lydia is that there was -- I
think you thought that there could be some improvements
there. So I'm wondering if you could sort of -- I'm trying
to tease out the difference there and why you in a sense, the
way I listened to it, come to different places.

Lydia, I wonder if you could be a little more
precise?

MS. BEEBE: Well, you know, we have not had any
problems. I mean I have to say I think the broker community
does what they need to do in the situations they have. I
mean that's the way our system is developed. Everybody has
kind of got a system that works for them.

You know, I think at the greater scheme of things,
just to make it as simple, for me, as simple as I can explain it, we issue a proxy card to all our registered proxy holders, including CDINCO, which then issues an omnibus proxy card to all the people that they held chairs for, including all the brokers, who then issue proxy cards for all their voters. And the shares that are loaned out, then they get another proxy card.

And so I think what I was trying to say is the system that we have has -- it's not that any particular individual is not an efficient or not doing the right thing but we have this system that creates this daisy chain, which is I'm not sure the most efficient system that we could come up with if we really tried.

And to have more direct communication -- I mean one of the things that Ronnie said was that they haven't really been able to get their retail investors to vote. And I don't know that having the issuers more directly involved will help that, but I think most issuers would like to try.

MR. SIRRI: Well, in the last piece I think you referred to a chain here. An important part of the chain is what happens with a firm like ADP or BroadRidge. I wondered if you could talk a little bit about your role in this process and your role in the reconciliation process, what you do.

MR. O'CONNOR: Thank you, Erik. First, I think I'd
like to just -- the SEC has come to rely on us to always show up with some statistics, so I'll give a few statistics very quickly. But I think the process has been working very, very well, and I think the facts and the statistics support that.

So when we look at -- and I really do think it's been a good effort by all the constituents being that banks, brokers, issuers, institutions working together with the leadership of the SEC and the NYSE to move this process along.

So what's taking place in terms of investor participation, for this proxy season we expect that quorum percentages for what we represent on the street side on behalf of our bank and brokers will be just about 90 percent. So that is great participation. That is shares. Now I know you'll talk about it later, but about 19 points of that 90 percent is attributable to the broker vote. But every year we've been measuring this since 1993 that quorum percentage has moved up. So I think participation is in fact growing, which I think is to everybody's benefit.

We also measure efficiencies in terms of cost and the implementation of technology. This proxy season we'll get very close to approximately 50 percent of the accounts that we receive from the banks and brokers will no longer require a physical mailing.

So there's big savings of course as a result of
that technology that's been implemented, and that comes by way of whether it's e-delivery, a proxy edge product, householding and other ways that we consolidate accounts. If you look just 10 years ago, that number was under five percent. So we're going to be close to 50 percent, and I think that number can continue to grow, and I think if we work together that number will continue to grow.

And again, it has taken significant print and postage costs out of the process for issuers. And the last thing I'll comment with regard to stats is really the voting percentages. A large majority, close to 90 percent, will voted electronically. So that's both through proxy edge, which is our institutional platform, as well as the internet. So close to 90 percent of all the shares that are returned will be voted electronically.

This next piece of data, which I think is important -- and we talked about over-reporting and over-voting. I think there is a clear distinction to make. Obviously there's been some issues where in the balancing of shares between the broker, what they pass on to us and basically the way the process works is we do get and go out as we get the record date information, go out to our bank and brokers twice basically for every proxy job. We do it once at search. We do it once at record date. We get all their records back. We aggregate them. We report it back to the
issuer. We give them those positions.

We also now get a DTC feed. With that DTC feed we can now compare DTC's positions and shares to that that's been reported to the broker. We pass that back to them so that they can do their reconciliations.

Putting the scope of this scenario, Market Reg a couple years ago reached out to us and said give us a sense of how much of this over-reporting or over-voting is really taking place, and I do apologize that this is somewhat dated, but we would be happy to update it. But we did an analysis that we shared with Market Reg, and this was at the point in time a couple years ago where there were only 10 nominees utilizing this over-reporting service that we had in place for several years.

And during that time frame we -- when we are the tabulator for the issuer is the only time we can really measure this, we had 329 jobs in a seven month period and again only 10 nominees. On average, the number of nominees that over-reported their position versus DTC was 31 out of an average group of about 228 nominees being included in each job.

So about 31 out of the 228 had an over-reported position. The percentage of shares that that represented was just over two percent. The percent of the shares outstanding was less than two percent. It was 1.79 percent. If that
nominee though in fact is on the over-reporting system that
we offer they would, if in fact they vote, put them over
their DTC limit. We would pen that vote at the DTC level and
provide a report back to the broker where they'd be able to
reconcile and they would go through the process that Ronnie
defined in terms of them doing their allocations or whatever
adjustments they needed to make.

I'd like to then point out that after there was a
lot of conversations about over-reporting and concern, SIA at
the time, SIFMA came out with a program to encourage more
nominees to participate in this prevention service,
over-reporting prevention service.

And the next tranche that we measured was from
another five-month period where we had 58 jobs. At that
point in time there were 100 nominees on the system. And the
average number of nominees over-reporting then dropped to 16
and the over-reported shares as a percentage of shares voted
was .37 percent. The over-reported shares versus shares
outstanding was .33 percent.

Today we have about 295 nominees on the system.
Those 295 nominees represent about 95 percent of all of the
accounts that we represent on behalf of the bank and broker
community. So the instances of this over-reporting taking
place is non-existent I would say for anyone that is on the
service. And given that we're covering 95 percent of the
accounts I feel very, very confident that this overreporting situation has been dramatically reduced.

And the last distinction I'll make is when it comes to -- when I say 'over-reporting,' as tabulator, the tabulators can't and don't vote more shares than they're allowed to vote. So historically what's been done in the past is if there was an over-reported situation, over the DTC level, they would go back to the nominee and look to reconcile with that nominee to bring that share position down.

And I think it was done on a materiality basis. So if it was material it would have had some meaning to the meeting, then those conversations would take place. I think if there wasn't any materiality those conversations didn't take place. But we've moved dramatically ahead in terms of some of the technology that we've added working with the bank and broker community to address this issue.

MR. SIRRI: Lydia, have you had a different experience than that, because I know you've spoken on this topic before?

MS. BEEBE: No, I don't think I would say we've had a different experience. I think the concern of the issuer community is that the attempts to control over-reporting don't necessarily always protect the integrity of the actual vote. The rounding out or topping out of the broker votes
may not actually represent what the underlying shareholder
votes.

And so I think the concern is, you know, I think
somebody in the last roundtables used the pre-scandal word,
but the concern is when you get to the point when you have a
vote, an important vote that's 51.1 to 49.9 and you're in
litigation over the shares you're going to be trying to
defend all these systems of approximating the correct vote
for the actual shareholders. And I think technology can do
pretty well for us.

And so I guess that's the challenge. Are we close
efficient of being exactly accurate?

CHAIRMAN COX: You know, if I might, this strikes
me, listening to this a lot like watching a football game
where, you know, the team that has the ball on third down
runs it up the middle and both offensive lines pile on top of
each other. There's the mass of humanity. The refs go in
and try and pry the men apart and they spot the ball and try
and guess where the runner's knee went down.

And then the bring the chains out and the measure,
and they find that it was short by inches. So you've got
this mismatch of a rough approximation on the other hand with
this attempt at exactitude on the other hand in a close
contest. I think one of the things that troubles us here is
that that's an illusion of exactitude and we probably have to
do a much better job if it really were to matter.

MS. O'NEILL: I think that the point that we need to get -- have a system that has integrity is well taken. You also have to look at what would the cost be of actually unwinding various -- the way we hold shares as a fungible mass down to the account level. Many of the markets that I know do have direct registration of the shares and every shareholder has a position that's marked out to them.

The voting in those situations is very expensive.

There's a huge cost involved in voting. You actually have to have shares that are held at a brokerage house re-registered into the share's name in some markets. And so that actually ends up as a disincentive to people voting and expressing their opinions. And I just think we have to look at whatever we do decide to do. It needs to balance the costs with what we gain.

MR. O'CONNOR: If I could just add to that, I think in a number of those markets as well, they are nowhere near as efficient or liquid as the U.S. market. And I think that we have to be sensitive to whether any changes that would be imposed along those lines would reduce liquidity.

For example, if you think about it, a simple example where if Ronnie bought shares in her account and lent them out, right, she's still economically long that stock but the vote will go with the stock. And let's say that she
lends it to Director Sirri, who short sells that stock to
Director White; Director White is now economically long that
stock. He is going to have the vote, and he should have the
vote. Director Sirri should not have the vote because he
lent it out.

And I think that if you start to get -- I think we
just have to be careful about how you would address movement
of that vote because if you do then you reduce the ability to
lend stock, and if you reduce the ability to lend stock you
decrease liquidity in the market and you definitely take away
from, I know, another of the commission's concerns, which is
fails. And so I think we just have to be sensitive to
collateral effects of any of these.

CHAIRMAN COX: If you wouldn't mind, I'll just
follow up. Are you indifferent as to the arbitrary rule that
might be imposed by the law when shares are loaned concerning
who gets the voting right? Does it matter more that we know
exactly who has the voting right than whether the lender or
the borrower has that right?

MR. O'CONNOR: Well, let me step back for a second.
When you say the -- am I indifferent to the conclusion of
law, the holder of the stock -- let me make sure I understood
the question, Mr. Chairman. The holder of the stock has the
right to vote that stock until he foregoes that right.

CHAIRMAN COX: I'm just talking normatively, not
objectively or descriptively, but as a -- if you're writing a
rule book, as a matter of first impression is it more
important that there be clear rules or when you just
described a moment ago that perhaps Sirri shouldn't have the
right, is that because you think he shouldn't or that because
under this set up we have now he shouldn't?

MR. O'CONNOR: My statement there related to the
fact that Director Sirri has actually foregone that right
contractually, either in the form of a stock loan agreement
if he's a fully paid customer who's entering into a
securities lending agreement, or under the terms of a margin
arrangement if he's incurred a margin debit and has the
stock --

CHAIRMAN COX: Well, the reason I ask this question
is that one way that we can address concerns about pealing of
voting rights and people borrowing shares solely for the
right to vote them and the consequences, some of which are
negative, of disconnecting economic -- at least the interests
of most long-term economic holders from voting, would be to
have a different rule.

MR. O'CONNOR: And I think, Mr. Chairman, it's a
fair point. Professor Hu and I were talking about this
earlier. And I won't profess to speak for him, but I think
that discussions of people borrowing stock to vote are
extremely exaggerated, to be conservative.
There are rules in place, the Reg T requires there be a permit of purpose for a stock loan. When we make a loan we don't deliver to a hedge fund, we deliver out to the buyer. So in the example that I gave Director Sirri sold the stock short, so Director White would receive the shares. We wouldn't give -- we, and I'm not aware of anybody, I've spoken to some of my major competitors, nobody would loan those shares to director Sirri just to sit long in his account. A, it's inconsistent with Reg T, we believe, and B, you know, again, nobody is seeing this a market.

And maybe I'll ask Professor Hu to comment. I know he has a view on this area.

MR. HU: Let me offer the general comment that listening to the very interesting discussion reminds me of something that Woody Allen once said, "I took a speed reading course and read War and Peace in 20 minutes; it involves Russia."

Now decoupling, we're talking about a phenomenon. Decoupling of voting rights and economic ownership I think is at least as complicated as Russia and I only have two minutes. And so one major point that should be made is that the stuff we've been talking about basically in terms of the decoupling of voting rights and economic interests, the kinds of departures from that, the delinking that we've been talking about basically is a byproduct of this need to
accommodate high levels of turnover, high levels of trading
and also to accommodate the needs of short sellers and others
to have this shared lending system. They're very important.

This kind of decoupling is not meant as a tool for
corporate control, in terms of battles for corporate control.
And from what Larry was talking about and others, you know,
that very often, in terms of these errors they are kind of
rounding errors, that in most cases they're not going to
matter too much.

I actually think that the more interesting kind of
departure from one vote, one share, where there's decoupling
is when, for instance, a hedge fund affirmatively takes
advantage of the revolution in derivatives, in particular the
over-the-counter derivatives market and certain other capital
market developments to deliberately decouple for the purposes
of trying to win battles for corporate control.

So this very different from what we've been talking
about before. And in terms of this decoupling, in terms of
how they relate to battles for control you could have a
situation that one type of decoupling would be where the
hedge fund has far more voting power than economic interest,
right? That is so that they have voting power that has been
emptied of a corresponding economic interest, and as you know
from the Southern California article, what we've called empty
voting.
And in the extreme case you could have a hedge fund who might have the highest number of votes in a company and yet have zero economic interest or even worse, a negative economic interest. In that kind of situation it would be akin to Osama Bin Laden being the swing voter in our presidential election.

Now there's another kind of -- it's not even like the Swiss. At least they don't care, you know? This is Osama Bin Laden, okay. That's the negative economic interest's biggest vote holder.

The other kind of decoupling in terms of voting rights and economic ownership really runs the other way. With empty voting you had more voting power than economic rights, all right.

Sometimes you might want something that's really the reverse, that's kind of like the reverse, and the way it works is this. Basically if you are clever enough in terms of using -- for instance, a certain over-the-counter derivative known as a cash-sell equity swap, you distance yourself sufficiently from the voting power through these cash-held equity swaps.

You can very often completely evade the disclosure rules central to the battles for corporate control, in particular 13D, that you could have a situation where you effectively have access, not only seven percent, say,
economic ownership, but flip immediately to a seven percent outright ownership and yet avoid disclosure in terms of the rules that are designed to achieve a level playing field in terms of battles for takeover, the battles for corporate control.

That is, that this is an example of what we in the Southern Cal article called hidden morphable ownership. You can quickly morph into these big stakes, that you subvert a system that is really central to a level playing field in terms of battles for corporate control, so that I think that in terms of just decoupling that in addition the kinds of decoupling issues that flow as a byproduct in effect of high turnover rates, the need to service share lending markets, we also ought to worry in terms of whether the U.S. disclosure system, the SEC's disclosure system is modern enough to deal with this other kind of intentional decoupling.

MS. NAZARETH: Could I just try briefly I think to answer your question because I think you raised an interesting question, which is if we have this problem with decoupling why don't we just address that issue and say if you're borrowing stock you'll keep the vote or whatever or if you're lending the stock the vote doesn't go with the loan. But the problem even in the simple example that we had, regardless of what Erik's incentives were in borrowing the stock -- in this case we said he sold short, when John bought
the stock he expected, as a full owner of the stock, to receive the stock with the voting rights.

So that's the problem. Regardless of what everybody's incentives are in this great swirl of transfers of securities, the ultimate person who bought the stock, he just went into the marketplace and bought, he expected to receive the security with the vote.

That's why -- exactly, which is where Professor Hu started, which is saying this is enormously complicated. And his example with War and Peace is so apt because ultimately it isn't as simple as just saying, well, let's change the way the contractual rights work with respect to the way the stock -- the economic interests and the voting rights are aligned.

MR. HU: I should point out that I'm just easily baffled.

MR. SIRRI: Commissioner Casey.

MS. CASEY: I just wanted to ask you, Professor.

Beyond the theoretical of the various strategies that hedge funds and other participants might be able to pursue, how prevalent do you believe it is, prevalent now? And then what is the potential in the marketplace in light of the use of --

MR. HU: Well, for instance, in terms of things more directly related, more closely related to the SEC as opposed to the Delaware Chancery, in terms of disclosure issues it's
my understanding that -- from talking with people in the
hedge fund industry, both hedge funds as well as
practitioners, that very often it's a standard technique to
avoid disclosure of these big stakes. So you might pick up
for instance 4.7, 4.8 percent in shares and then you pick up
additional four or five percent economically and you were
counting on the fact through these cash level equity
swaps -- in terms of -- you take the long side or the four or
five percent equity swaps. The derivatives dealer very often
hedges the equity swaps that it offers to its customers
through holding max shares.

And so very often when their customer decides that
they want to cancel swaps, the actually need the voting
rights, they call the derivatives dealer, terminate the
swaps, and lo and behold, very often the derivatives dealer
will sell them the three percent shares instantly. So you
instantly pick up the additional three percent, which gives
you extraordinary strategic advantage.

So the issue is that just kind of evades the
purpose of 13D, which is to have this level playing field in
terms of these large stakes. Part of the problem basically
is, frankly, 13D as well as 13F were basically developed
before the emergence of over-the-counter derivatives, before
the emergence of these -- the morphability of economic
interest in voting power.
And so it raises a profound issue in terms of this 13D system, which is really central, and 13F to a lesser extent, to this kind of corporate control issue, which is ultimately what we're talking about ultimately, the power, how a corporation's government is rooted in the shareholder vote. And with financial innovation, the OTC derivatives revolution in particular has undermined the integrity of and the transparency of this finely wrought system.

MR. SCHIFFELE: Professor, two points I want to raise. First, on the derivatives, and I don't profess to be the expert on derivatives, but I would just note that I believe there are rules and interpretations under section 13 that relate to arrangements you have to get stock and whether or not you need to disclose.

But leaving it at that point that there may be rules there that exist already, I just want to bring it back. I always like simple examples, so maybe keeping it -- coming back to a simple example. And I know that short sellers sometimes have a negative kind of reputation in the press, if you will, so let me switch my example to where Director Sirri is a market maker as opposed to a short seller and he's using borrowed shares to sell to Director White. I think we all agree that Director White should have the vote when he buys those shares.

I guess I would ask, and the question I was putting
to you earlier, aside from derivatives, staying very simply
in the securities lending market, have you seen any kind of
prevalence if you will of people borrowing to vote stock in
the United States?

MR. HU: The issue is, in terms of collecting these
eamples, the kinds of examples involving share lending that
we've thus far looked at have occurred outside the U.S., such
as the Laxey Partners situation or the Henderson Land
situation. In the U.S. you do have Regulation T, which
limits this, but I have not tried to do any kind of empirical
analysis, and so I would leave it at that.

The kinds of share lending examples we're talking
about are abroad. But one thing we should point out, and
this is not necessarily nefarious or anything like that, the
very act of share lending as you've discussed, the very act
of share lending, basically you're giving up voting rights.
There is a decoupling that occurs from that so that even
though in a sense nobody is looking from the borrower end,
obody is borrowing the shares for the purpose of getting the
voting rights, looking at it from the perspective of the
institutional investor or the pension fund, he's giving up
voting rights, right?

MR. SCHIFELLITE: Oh, absolutely. And we could talk
about it some at a later point in terms of the benefits and
the costs of that, but the notion is that there is this
decoupling simply from the fact of the lending of the shares. And this decoupling does raise issues.

MR. HU: Let me just make one last note to the director, please. I think again, keeping it in the bigger picture of things, to have a liquid market with fungible securities you need to have some kind of securities lending system and the vote has to go --

MR. SCHIFELLITE: Our goal is not to develop -- our goal is not to have the perfect coupling of shares and economic interests. That actually is not the goal because, in fact, if you have that kind of system you might end up with a situation where you're actually hurting society overall in terms of limiting the ability to trade quickly, in terms of interfering with the share lending market, which is essential to short sellers and the proper pricing of shares.

MR. SIRRI: So we're fortunate to have in fact an exact solution to this problem in the instance between Director Sirri and Director White because by policy SEC employees cannot short shares. So you'd be happy to know that there was in fact no problem.

MR. WHITE: There is only one lawbreaker and he's to my right, no -- rule breaker and he's to my right.

MR. SIRRI: there is one other question we'd like to touch upon before we bring this panel to a close, and it's the question of the record date. And let me throw this open
to anyone. Whether the issue is lending as in the previous
discussion or otherwise, we know that voting and the
TABULATION OF SHARES AND THE ACCOUNTING FOR THOSE SHARES
occurs on the record date, but commentators have raised a
question about knowledge of the record date and when you in
fact know when the record date will be and in fact what's on
the proxy at that time. And there have been discussions
about better disclosure, earlier disclosure about the record
date and the proxy content, and let me throw this open to
anyone on the panel.

What are you thoughts about that? Should there be
an earlier disclosure of when the record date is and the
content of the proxy or are we in, in fact, a fine shape
right now?

MS. BEEBE: You know, I can't think of any reason
why there can't be earlier disclosure. It seems to me like
most issuers disclose the record date fairly early, but you
don't really set the record date until you set your annual
meeting date, generally speaking, and I think some of that
depends on just the board schedule and what the board
activities are and how it's -- you know, kind of if you have
any reason to make any changes.

Our record dates are generally set the end of
January for a meeting the end of April, and so it's probably
set six weeks out. But how that information is shared, other
than -- I mean we supply that information to the NYSE and I
think Rob and Ronnie will be better able to comment on how
soon the actual investors know about that. But there is a
lot of lead time if you really follow it to get your shares
back.

MR. SIRRI: Ronnie and Rob.

MR. O'CONNOR: I think the short answer is the only
upside I could see is that potentially investors who are
active and very interested in voting may use that time to
notify -- presuming they act promptly would notify the
brokers that would give the brokers more time to get stock
back into the box to vote. That would be the only upside, I
think, of extending the time.

MS. O'NEILL: And if I could add to that, Erik, I
think the current system, because the record date is
announced 20 days prior to it actually taking place, does
allow for the type of transactions that Rob has spoken about
where people are getting rid of their hedge positions and
such so that they are fully long if they are that interested.
That's happening now.

MR. SCHIFELLITE: The only thing I would add is
certainly hearing from the institutional market they -- I
think 20 business days is occurring where there is notice
prior to record date, but I think some of the requests now
have been could we understand what some of those proposals or
what the agenda potentially is for those meetings because that may be the event that would cause them to want to recall the stock or not.

MR. SIRRI: Look, I hate to bring this lively discussion to somewhat of a conclusion. Let me ask you, if you will, to summarize your thoughts in a minute or two and in particular maybe, given what we've been talking about, if you have any suggestions for improvements to the current system I wonder if you might highlight that.

Let me start at the end. Lydia, would you start us off?

MS. BEEBE: Thank you, Erik. You know, I do want to thank the commission and you all for putting together these roundtables because it does strike me that voting in our system was created at a time when voting wasn't all that important. The average vote was 90 percent, and it was just a matter of getting the quorum in so corporations could continue business.

And voting is getting increasingly more important. You know, the majority vote for directors, the admin and the proxy advisory services and the influence of ISS. The institutional investors are much more organized and collaborative than they used to be and we certainly are looking at the possibility of proxy access and annual votes on executive comp.
And so all those things make it important to get the voting right while we have a chance when we don't have any big problems and when everybody is pretty able to work it out. And so I guess I think that we need to take a look at some of these things. And probably number one is to ensure the voting integrity.

I think Chairman Cox sort of captured my thoughts exactly as that sometimes people are going to actually measure exactly who voted on what, and we want to be able to have it be right. The economic ownership is an increasing concern, and as I said, at the very least I think we need to make that transparent and the connect -- to as much extent as possible -- the connection of voting and economic ownership should be strengthened. I would hope that the retail investor wouldn't be forgotten in this and that we could improve our access to communicating with the retail investor from the issuer community.

And I talked some about the intermediation and inefficiencies that I think other countries have made some effort in improving. And I thought Ronnie and Rob and Professor Hu's comments were all very valid. I agree with everything they said about being concerned about the impact on the market as a whole. I think that's why my hope is that you would look at this all holistically.

MR. HU: The governance of the publicly held
corporation is ultimately rooted in the shareholder vote. Hedge funds and financial innovation pose an especially interesting challenge to the historical coupling of shareholder votes and economic interest. The SEC can play a vital role. 13D and 13F are obsolete. They don't capture this kind of decoupling. The prospect looms of voting outcomes decided by hidden warfare using new financial technology to acquire votes.

In the Southern Cal article we proposed a modernized, more streamlined SEC disclosure system that better addresses both hidden, morphable ownership and empty voting. Ultimately, perhaps soon, other responses to decoupling may be needed.

Which of these additional responses should be adopted? Not totally clear. That will depend in part on information as yet unknown which our disclosure proposal is designed to collect. What we do know is that all existing legal and economic theories of the public corporation presume a link between voting rights and economic ownership that can no longer be relied on.

MR. O'CONNOR: Thank you, Erik. I think as we heard this morning there are many views on these issues. We obviously appreciate the opportunity to present one of those views up here today. I would just urge the commission and the staff to consider carefully any action in this area, as I
I think the current system works fairly well and I think the consequences of a change that doesn't facilitate the omnibus centralized clearing and settlement system could have disastrous consequences in the market.

I think that allowing brokers to choose the methodology by which they allocate, which is, in my words, another form of tracing, just at a different point in time. Allowing firms to decide how they're going to do that and disclosing that to their investors is I think the most efficient and best way to take this forward, and I want to thank you for your time and consideration.

MS. O'NEILL: First of all, I'd like to thank you for the opportunity to participate in this panel. It's truly an honor to be here with this distinguished group.

I hope that we've been able to shed some light on our existing beneficial voting system. It's important to note that the system looks very different today than it did eight years ago when my firm became an ADP client. A lot of the cost has been driven out of the process through innovation. The brokers and the banks, in partnership with BroadRidge, have worked to evolve the system, to take advantage of innovations in technology and to respond to the changing regulatory environment.

This relatively brief period of time in history has seen the advent of householding, the development and
acceptance of electronic delivery and the introduction this year of vote confirmation. Even today there's a group of brokers, banks and BroadRidge associates working to design a system to offer and implement the notice and access electronic delivery, beginning just a little bit over a month from now.

Our voting system fulfills several key goals. It maintains our clients' confidentiality and provides for data security for all participants in the process. It permits clients to control their own experience by choosing to receive materials in hard copy, via electronic means. And it lets them vote either on paper, on the telephone, via the internet or via the newer innovations of the investor mailbox platform. We believe that this control by our clients of their experience leads to greater voting returns.

We also hope that you've seen that the system has many tools to assist participants in delivering valid votes. These range from the automated reconciliation tools that BroadRidge offers that allow the participants to allocate voting shares in a manner consistent with their own firm's business model to the confirmation tools that allow investors to be sure that their votes are properly represented at the meeting.

The system is very complicated but it's also efficient and reliable and we're always seeking to improve
MR. THOMPSON: Thank you again for inviting DTC and NSCC to participate in today's activities.

NSCC and DTC now clear and settle approximately 6 billion shares a day. The innovations that were made in the late '60s and early '70s have worked. And as the chairman said earlier, the U.S. markets are the most liquid and the most competitive in the marketplace.

I would tread lightly in tinkering with a system which today, on an average year handles 1.5 quadrillion in transactions, in equity and corporate -- bonds, 8.5 billion transactions yearly, worth 175 trillion dollars. That is a system that works, brings tremendous liquidity to the U.S. marketplace, helps out U.S. investors. I think we have to be very careful how we want to tread in this particular area and tinkering with this system and have consequences which we have not thought up. Thank you.

MR. SCHIFELLITE: I would also, like my colleagues, like to thank the commission for allowing us to participate today. I would just conclude by saying that as processes we're always going to look to make this, whatever policies are in place work as efficiently as possible.

I think Ronnie really spoke to that issue, and I just end with the emphasis on confirmation. So it is something new that has taken place this year where we
are -- we're the tabulator confirming back to institutions so that they know if there was an adjustment made to their shares. They will know that. They get electronic confirmation and every nominee gets a total confirmation.

We will look to continue to make this process work and be efficient and be transparent through the audits and other things that we do. Thank you.

MR. SIRRI: Chairman Cox.

CHAIRMAN COX: I just want to thank everybody. This is a fabulous panel, and I'm just unhappy that life is so short and that we're the Woody Allen speed reading deal here.

Thank you all very much for shedding some light on this. And Rob, I did get -- in a follow up comment that you made I got a very clear answer that you think, not only descriptively but normatively that any system that has share lending -- in such a system the vote has to go with the loan shares. I heard you say that so I just --

MR. O'CONNOR: Yes.

CHAIRMAN COX: Okay. I just wanted to hear that.

So on all the unasked questions we'll just stay in touch. And we want to thank you very much for working with the staff and with us as a commission. These are very important issues and your knowledge is going to help us solve these challenging problems.

MR. SIRRI: Thank you. Why don't we take a 10
minute break, and we'll be back.

(Break.)

PANEL TWO - BROKER PROXY VOTING

MR. SIRRI: Welcome back. Welcome to the second panel on broker proxy voting.

The issue of discretionary voting by brokers is an important one. As you know, NYSE rule 452 currently allows brokers to vote on behalf of beneficial owners on certain matters deemed routine by the NYSE.

Those that take issue with the broker voting point out that, one, voting by brokers separates the votes cast from the economic interests of beneficial owners, a point that was discussed in our earlier panel; and second that brokers historically have cast their vote in support of management.

To date, to address these complex issues we have, again, a number of distinguished panelists, and let me take a moment to introduce them. Starting on the audience's left, the panel's far right is David Berger, who is a partner at Wilson Sonsini. On his left is John Endean, who is the president of the American Business Conference. On his left is Tony Horan, the secretary of JP Morgan Chase. On his left is Cathy Kinney, the president and chief operating officer of NYSE Euronext. On her left is Don Kittell, the chief financial officer of the Securities Industry and Financial
Markets Association, SIFMA. And finally on his left is Paul Schott Stevens, the president and CEO of the Investment Company Institute.

So why don't we just get started? David, I wonder if I might start with you. In the last panel we learned that most publicly traded shares are in fact held in street name and that the procedures for beneficial owners to vote their securities positions are what they are.

I wonder if you can talk about how the NYSE rule permits broker voting to work and some of the advantages and disadvantages of broker voting.

MR. BERGER: Sure. Thank you very much, Director Sirri. It's a pleasure to be here.

There's been some form of broker voting under NYSE rules for more than 60 years now. The system began as a way of allowing brokers to vote when shareholders did not return a vote. So the way the system was developed in the late 1930s was that brokers were allowed to vote if the beneficial owners of shares didn't return a vote within ten days of a shareholder meeting.

That system has continued to evolve over the last half century or so, such that brokers are allowed to vote on routine matters where shareholders don't return votes within 10 days of an annual meeting. Under the NYSE rules there are 18 specific items right now which are considered non-routine
matters where brokers are not allowed to vote even if the
shareholders don't return their ballots.

Primarily the broker vote historically was used to
enable votes to be cast on matters such as quorum as well as
uncontested elections and other routine matters. As time has
evolved the NYSE has evolved with notions of corporate
governance to add additional items that were considered to be
non-routine, and that's where we got the 18 items today.

Most recently the NYSE has proposed following the
recommendations of its proxy working group that director
elections, even in uncontested cases, be considered a
non-routine matter. And that's the current issue, I think,
that's before the commission at present.

MR. SIRRI: Thank you. Cathy, I wonder if you could
talk a little bit about what David alluded to about the NYSE
proxy group's role in this and their recommendations, your
situation where you do have those 18 conditions and how
you're thinking about this set of issues right now.

MS. KINNEY: I think that, first of all, thank you
all for inviting the exchange to participate in this panel.
We think these are very important processes to help advance
lots of important issues.

I think that the whole discussion about Rule 452,
which was initiated by the exchange -- in the prior panel I
think Lydia Beebe commented that it's important for us to be
talking about these things when we're not under pressure to
have to make change but really to give a very -- to be very
thoughtful about not only the structure that's in place but
the processes that flow from those structures.

So we, in I think a continuing evolution of our
role in governance, felt that it was very important to make
the statement that the election of directors is not a routine
matter. And of course that begins to call into question the
whole rule 452 and the number of items that we have that are
both routine and non-routine.

So we called together the proxy working group,
which we thought was a very balanced representation of all
the interested parties, to review this issue in particular
and its effect on issuers as well as the process itself.

And I would just say the following. One, I think
we still maintain the view that the election of directors in
this environment and given the governance and the
strengthening of governance among our issuers it would be
important for all shareholders to vote.

I think number two we have put this in the context
of a rule change and filed this with the commission. And I
think that it would be important to continue to gather as
much comment from interested parties as possible. We have
put out and will be putting out an addendum to the report by
the proxy working group shortly that will line up with the
most recent filing we've made with the commission.

So I think that this issue was very important. I don't know how we could conclude anything but the fact that the election of directors is not routine. I know there are a number of issues that people have raised about what the effects are of that change, first and foremost probably quorums, but I think if you think about the statistic that was given previously about share ownership in this country among retail investors, it's only about 19 percent.

I think if you think about a prior issue, which was the shareholder voting of equity compensation plans, we made that a non-routine item several years ago. People thought that would be a significant problem with increasing costs, and in fact we only know of one plan that actually did not get voted on by the shareholders.

So we're using a number of -- using the past and our experience in the past perhaps to inform the future. But I think it would be important for shareholders to have the right to vote. I think it is important for us to ramp up education, and I think that it would be important for the SEC to publish a rule, if nothing more, to invite more comment and to be more informed about what the entire industry says about this change.

MR. SIRRI: You had mentioned education. I wonder in what context did you mean education.
MS. KINNEY: Well, I think there are two parts to education. One is we've been working with the broker-dealer community. I think it would be important to standardize the language. If there isn't going to be a change in terms of shareholder communication and if we are going to stay with the OBO/NOBO status, I think it would be important for the broker dealers to have a consistent language when customers open accounts about whether they choose to be OBO or NOBO. But as importantly I think there should be a refreshment of that status periodically, perhaps every two to three years. And I would say third the default position should be NOBO and not OBO.

MR. SIRRI: Cathy, could you just -- we're going to have a panel on the OBO/NOBO question. Could you just take two to three sentences to just explain what that is?

MS. KINNEY: Sure. When an investor opens an account with a broker dealer they basically designate whether they want to be an OBO or an objecting beneficial holder or a non-objective beneficial holder. If they're non-objecting, that means that there can be communication with that shareholder. Now most people it seems have set themselves up as OBOs and so that precludes communication between the issuer and the shareholder directly and then all the communication has to then go through the broker dealers.

We did a study when we started this working group
to really find out if investors understood that, and I think we were very surprised that most either didn't remember that they had made such an election or two, they didn't really remember what the difference in the election was. And so I think that's why we were suggesting that if -- I think if you walk back and look at the report, I think we suggested some fundamental change perhaps and perhaps even opening up the communication between the issuer and the shareholder directly.

But if in fact we were going to stay with the OBO-NOBO designations, that really has to be focused on more consistently with the shareholder, number one. They need to be clear and understand what they are electing. And we even in the committee, and I think David will tell you, we talked about the idea of recommending, getting rid of that designation completely along the lines that Lydia had recommended earlier.

But I think we felt that was probably something that ought to be handled by the SEC since they really have the oversight of the communication between the issuers and the shareholders.

MR. BERGER: If I could just add something to that, we have a very interesting and sort of dynamic problem going on with shareholder voting, both from an institutional investor standpoint and from an individual investor
standpoint.

From an institutional investor standpoint, the reality is that a lot of institutions who own shares in thousands of companies don't find it very overwhelming to make their own individual decisions on individual companies, and so they end up relying upon institutional advisory services or proxy advisory services to make voting decisions just because as a practical matter it's very difficult to follow what goes on in thousands of companies, often whose dates for elections are held within days or actually on the same day as each other. It's just an overwhelming process.

For individual investors the problem is slightly different. That is, an individual investor, a retail shareholder, gets a proxy and has somewhere between 30 and 60 days to review a great deal of information. And although there's been a lot of strides and efforts make it easier logistically for the individual investor to return the vote over the course of the years the fact remains it's still very difficult as a practical matter for a retail shareholder to review all of the information that's set forth in a proxy and feel like they're making an informed decision.

And so the practical reality is most of the time retail shareholders are -- we're not getting the votes back. I think as Cathy mentioned, we need to do a real job on a lot of different levels of helping to educate people as to both
MR. SIRRI: And Cathy, in your comments you had mentioned that the work of the proxy working group and some of the comments that it engendered -- Paul, I wonder if you could comment on that working group and the NYSE's proposals, especially in light of your position representing mutual funds because in some ways mutual funds are unique here. In fact, they are, if you will, on both sides of this issue in certain ways, so I wonder if you could talk about your views.

MR. STEVENS: Erik, thank you. And Chairman Cox, members of the commission, thank you very much for the opportunity to take part in this roundtable.

As Erik says, we see this a little bit from both sides of the fence, I suppose, both as issuers of securities and as major institutional investors. Most of my recent attention to these questions has been really from the point of view of mutual funds and closed ends funds as issuers.

And I do want to commend Cathy and the working group of the New York Stock Exchange because they wrestled with some difficult issues. And I think it's significant some of the principles that have guided this.

First of all, I think there's a principle that not all issuers are created equal. Public operating companies have a different legal regulatory regime than investment...
companies do, which have a form of federal corporate law to which we're subject, including corporate law that regulates shareholder participation in key decisions and therefore the voting and proxy solicitation process.

We also have a somewhat different shareholder base because we serve a different purpose in the capital markets. I think it's significant if you look at the trends and the research that we as well as the SIFMA publish periodically that increasingly Americans are in the securities markets, the equity markets particularly through mutual funds as opposed to direct holdings of securities. And that's reflected in the holdings of different issuers.

Public operating companies have on average slightly less than half of their shares held by individuals. Mutual funds have almost two-thirds of their shares held by individuals and closed end funds have almost 100 percent of their shares held by individual retail customers; I think the number is 98 percent. So the difficulties of achieving a quorum for these different issuers is strikingly different and therefore also the costs involved.

I think we also need, although I would certainly associate myself with the point that Cathy made about the need for education, we also need to understand that not all shareholders who are subject to the proxy machinery stand in quite the same relationship to the issuer.
For example, in one of our biggest money market mutual funds may have five million shareholder accounts. People use those funds really as a substitute or as an alternative to a bank account. Realistically speaking, the prospect that you are going to get them to vote any issue that comes before them is challenging, but certainly it's not likely that they'll respond to an uncontested election of mutual fund directors. So I think as a practical matter that needs to be kept in mind as well.

That's not to gainsay the important role that fund directors play or the importance of governance at all, but I think it does give some depiction of the problems of getting people to the polls, if you will, and the costs and burdens of that, that that therefore raises. I'd make two other points. One, we were very pleased to be able to assist in the work of the New York's Proxy Working Group by providing some significant empirical information about the effects the regulatory proposal would have on mutual funds and closed-end funds. And certainly I think many market participants and those who represent them, my association and others, stand ready to be of that kind of assistance to the Commission or to the SROs at any time to try to give some hard data around the costs.

What we've found in this instance is that if we went to a system whereby you could not have broker
discretionary voting on uncontested elections of fund directors, you would increase your holder costs at a minimum between one and two basis points, depending upon the average account size of the fund, it could be as much as five basis points, and it would much more than double the solicitation costs because the likelihood of having to re-solicit, adjourn annual meetings and things of that nature.

One last point, Erik, if I might, and this really goes back to the last panel, I believe our members would likely say that some better process by which they can be notified of not just the record date but what is actually before shareholders at a corporate annual meeting would be useful, because they need that information in order to determine whether to call back the shares that they may have lent and to vote them.

So it's not simply a matter of when the meeting is. It's knowing well in advance what is on the agenda of the meeting and being able to determine in an exercise of their own fiduciary responsibilities the significance of that to the fund's investors that's really at stake. And I'll conclude there, Erik.

MR. SIRRI: All right. John, you know, in your position as president of the American Business Council I think you've talked about --

MR. ENDEAN: Conference.
MR. SIRRI:  Conference.  I'm sorry.  I think you've talked about your thoughts about the proposal with respect to small and mid-sized companies.  From an issuer's point of view, should broker voting be modified in some way.  If you think so, in which way should it be changed?

MR. ENDEAN:  Well, we agree with the New York Stock Exchange that the concept of corporate governance has evolved over the past few years.  In fact, it's hard to imagine anyone would disagree.  And we agree in that context that the broker vote should be changed, particularly involving Just Vote No campaigns, the broker vote, because it's typically cast unanimously in favor of management recommendations, serves as a thumb on the scale, just for management, and just vote no campaigns in the sense that it reduces the percentage of no votes to total votes cast.

So, interestingly enough, although I represent issuers I think that activists have a very good and in fact unanswerable point on this matter.  So the broker vote in our view should be changed.  The question is how do you change it.  We don't agree that the way to change is by declaring all director elections as nonroutine.

It's hard to imagine how an election that is uncontested, the outcome of which is self-evident to everyone and accepted by everyone, is anything other than routine.  Inevitably, this is an impact on small and medium-sized
companies as the Exchange's proposal to the Commission notes. The costs fall most dramatically on small and mid-sized companies of getting rid of the broker vote for director elections, because typically, small and mid-cap companies have greater Street-side ownership. So, put another way, they have more of an effort to round up the votes to get where they would be in any event.

But as I said, I want to come back to the point that we think that the broker vote should be changed, and we've offered, its seems like only yesterday, but two years ago when I addressed the Proxy Working Group. It's really remarkable to consider that I've spent two years on this issue, more than two years on this issue, when there's so many other things to do.

But, two years ago I said to the Proxy Working Group that in my opinion, there are two ways to go to solve the problem of the broker vote. One is broker-to-broker proportionate voting, and we'll hear a little bit more about this later with the I guess test marketing that's going on for broker-to-broker vote.

And the other alternative, which we kind of find ourselves in the interesting position of aligning ourselves with the AF of L, is simply evolving rules to declare certain kinds of director elections as nonroutine, and that therefore the broker vote wouldn't apply; specifically, Just Vote No.
If, under this idea, if the Just Vote No election occurred, it would be considered nonroutine and the broker vote wouldn't come into play. I think these more targeted efforts from our standpoint have a lot to recommend them, rather than simply a blanket refusal to use the broker vote on uncontested director elections. It's important to keep in mind, "routine" is not a synonym for "unimportant." As I sit here and my heart is beating, this is a routine matter, so far at least in my life.

(Laughter.)

MR. ENDEAN: And I don't think about it at all. And yet the function of the heart is extremely important, as I think we all can agree.

The election of directors in most cases is a routine matter. They're uncontested. Everybody knows how it's going to come out. What's important is, after these people are elected, whether they care out their duties and responsibilities to shareholders, to the Commission and to other constituencies appropriately.

It seems to me that the focus of good corporate governance ought to be on the actions of directors. And in the case of declaring uncontested elections nonroutine, I don't personally see, given the cost, the added cost, which everyone concedes will happen, what the benefits are. Simply
saying, well, it'll make the elections more transparent or
they per se should be nonroutine, is an interesting argument.
But it is not an argument that is, to my mind, sufficiently
backed up to make policy on.

And so, in the end, I appreciated the opportunity
to meet with the Proxy Working Group. I agree that corporate
governance has evolved. I think we can fix the broker vote.
And to use a phrase from the last presidential election, I
think it should be mended, not ended, as it pertains to
director elections.

MR. SIRRI: Commissioner Atkins?

MR. ATKINS: Yeah. I just wanted to follow up on
that, John, because I guess one thing that, when you talk
about the broker vote, what your exposition ignores is that
it is an agency relationship, is a contractual relationship
ultimately. And for those people who are leaving their
shares with a broker, you know, they are, you know, it's in
the Street name and in the broker's name ultimately. And
maybe I guess what I would suggest is perhaps we need to make
it more explicit rather than implicit that people who are
expecting their broker to vote for them, you know, have that
either through their account agreement or something like that
made much more explicit than before, rather than just ending
it, as you were suggesting for those particular things.

I was just curious why, you know, why we can't look
to that ultimate agency relationship to help make this clear.

MR. ENDEAN: I don't have any.

MR. ATKINS: Okay. All right. Well, I just was wondering, because it sounded like you were just making a blanket statement that any, even with a Just Vote No campaigns, it almost sounded like you were saying that it was inappropriate to have that. But I would suggest that it probably would be, if we could make it more explicit.

MR. BERGER: There is a -- there has been a proposal that we're going to discuss in the addendum to the NYSE Proxy Working Group report that Cathy mentioned, that was developed by Steve Norman, who is the corporate secretary for American Express, called Client-Directed Voting, which I think would encompass some of the ideas that you are talking about, Commissioner, whereby it would make very explicit to an investor that if they chose not to vote, they could have a blanket instruction that would cancel basically instruction that the broker would vote for them.

MR. ATKINS: Right. Because especially when the dog eats the proxy statement or somebody else throws it away, you know, you don't want to be disenfranchised, right?

MR. SIRRI: Tony, I wonder if you could comment on your thoughts about broker voting and proportional voting perhaps from the context of larger issuers?

MR. HORAN: Thank you very much, and thank you to
the Commission for having this meeting. I speak on behalf of JP Morgan Chase, but I do so in its capacity as an issuer. We also have brokerage roles, we have investment advisory roles. So my role here is as a representative of a very diverse issuer community.

And that respect, I am both a big issuer and a small issuer. We are big because we have 3.5 billion shares outstanding and a million different holders of our shares, but we're small in that we could call our hundred largest shareholders and reach over 50 percent of the shares outstanding, and we would know who we were reaching.

We would not be reaching -- in doing so, we would be accessing a list that represents our institutional base, that could be 65 to 70 percent of the outstanding shares. The other 30 percent that would be represented by the individual shareholders, we can't effectively reach, and it's not just a question of the NOBO/OBO rules, but just simply because it is more difficult and more expensive to reach them. But they're very important to us.

Only about half -- we have, of those 65 to 70 percent that are institutional, virtually all of them vote for the various reasons, legal obligation or others, they're set up organizationally to do so. They tie into the proxy advisory services. There's a process to handle the proxies coming in, and they get done. For the individual
shareholders, and these are a very important group of people, because when we speak of agency issues, it's very important for the management of the corporation to be ruled by its shareholders. Otherwise, you have the agency issue with management.

On the other side, with respect to the casting of shares, institutional shareholders for the most part are agents themselves, because they are casting votes on behalf of ultimate beneficial owners. Our roughly 30 percent, in the case of JP Morgan Chase & Co., held by individual investors, are the ultimate owners. So they are the ones for whom they should be able in the best position to make the decisions themselves whether to vote, whether to cast votes, how to cast the votes.

But from that group, there's only at best a 50 percent participation. So, the issues that I think we are all trying to deal with is what to do with that group not to discourage it, not to disenfranchise it. I think the Rule 452 proposal recognizes that the election of directors is a very, very important matter, as John said, it may be routine but not unimportant, even if it's an uncontested election, and so how to deal with that issue.

And the alternatives, such as all, as it presently is, or nothing at all, are not the only alternatives. If Rule 452 does change in the way it's proposed, the concept of
adding around it the issue of client-directed voting or standing instructions I think becomes very, very important, because it's not just a matter of offering or imposing proportional voting, because if so, proportional with whom? Proportional with other institutional investors? Proportional with the entire base of a broker? Proportional with individual investors?

As we watched our shares come in in last week's annual meeting, the first burst of shares that were cast, we presumed to individual investors. The institutions hold off till the end. They wait until the Proxy Advisory Services issue their recommendations. That first group of votes that come in are traditionally very much in favor of management, partially justifying why brokers would cast, when they finally do under the ten-day rule, in favor of management. And it's not to ignore that effect and not to be disinterested in the outcome, because we are interested in the outcome, but we think those other, many of those other shareholders who don't vote would also be inclined, because they can follow the Wall Street rule and sell if they do not wish to hold onto the shares, they would be inclined to vote with management more often than not.

And the idea of going out to shareholders, and as part of their brokerage arrangements, asking them to choose intelligently in an informed way whether they wished to have
their shares cast proportionally with management, against,
management, abstain, and then to have a feedback loop so that
the broker goes out and says, based upon what you've told us
before, here's the way we are going to cast the vote in this
particular matter, unless you come back to us and tell us
otherwise, so you have the ability in a particular matter to
change that vote.

That's a promising idea, and I think it really
needs to be coupled with these particular considerations.
So, thank you very much for the opportunity.

MR. SIRRI: Don, you know, Tony just mentioned this
issue of proportional voting. SIFMA has spoken out on the
issue, and I think you in fact recommended proportional
casting in a number of circumstances. I wonder if you could
talk about why you came to that recommendation, how it would
work. And Tony raised some particular issues about how you
might implement it. I wonder if you could talk to that?

MR. KITTELL: Sure. Brokers look at Rule 452 as a
way that they can help issuers conduct their business. I
mean, I don't think there's any self-interest on the part of
broker-dealers to either vote or not vote 452, although
there's an indirect interest on the part of brokerage clients
that if the repeal of 452 in some way changes communications
to clients that perhaps are not welcome, we would be
concerned about that.
Rule 452 is a voluntary rule on behalf of brokers. The practice over the years has been for them to take advantage of it and vote on its directed shares. The practice has also been to vote for management. In today's environment where corporate governance has reached a more sensitive level, I think the vote for management in an automatic sense implies something that brokers don't want to imply; that they are always supporting management.

So, we have gotten into debates about proportional voting. And there are at least three types of proportional voting that have been discussed; one proportional to all votes cast; one proportional to all Street name votes cast; and a third proportional to a broker's own voting instructions that it receives from its own clients.

We've tried to address the third method, broker-to-broker proportional voting. We've done it on a voluntary basis in order to demonstrate that it can work, in order to surface problems in implementation or in policy. We have one firm that embarked on a proportional voting strategy over a year ago. We have three more, all of whom were working with the New York Stock Exchange's Proxy Working Group, who volunteered to implement proportional voting this year, and they did so within the last two months.

And we have other firms -- we've asked all of SIFMA member firms to look into this, and we have a number of other
firms who are in varying stages of analyzing whether to proceed or not. The main issue that we've run into is how to define the universe that the proportional vote is calculated on. And there was a fear, or there is a fear on the part of some people that a broker-by-broker system is vulnerable to manipulation.

So what we've tried to say is that we will try to capture individual shareholders or -- that's one way to say it. Another way to say it is to exclude very large, activist kind of shareholders from the calculation in order to safeguard from this vulnerability of manipulation. In each case, the firms that have tried to tackle this definition of what's in the calculation, depends very much on their account structure.

If you have a firm that's 100 percent retail, it's very easy. If you have a firm that has a mixture of institutional and retail accounts, depending on their account structure, it may be very easy if they're institutional accounts or if they're activist hedge fund clients are treated in one account structure, it's very easy to carve them out.

That's been the issue and what has taken the time to implement this. And I think it raises a question as to whether every firm reaching its own conclusion on how to do this or whether there has to be some kind of broader standard
across the board is something that we're going to have to address.

And another issue is some sort of threshold on how many voting instructions make up the proportional vote calculation. Obviously, you get to a point where if there are very few instructed votes and a very large number of uninstructed votes, you have a tail wagging the dog kind of situation, which could get us into trouble.

It's a little bit too early to tell what the experience is. We do know how to implement it. And Broadridge, together with a number of brokers, are going about doing that, and they're now actually reporting returns on that basis. So we'll see how that works out. We think that it's a superior strategy vis-a-vis a pure for-management vote. We are not going so far as to advocate that proportional voting should be used in contested situations. But we do think that it's an interesting concept in the client-directed voting environment. If we can agree how to do client-directed voting in a way that is acceptable to everybody, proportional voting would be one of the alternatives, we think that clients could select and giving us standing instructions.

So we're here to assist in making 452 a viable alternative in the future. We think it would be a shame for 452 to be thrown out for all issues when the exceptions make
up only less than 10 percent or so of those situations.

MS. KINNEY: Erik, I would just like to supplement Don's points, and I think that when the working group -- and David can comment here as well -- I think that when the working group started out, we considered proportional voting, and we thought it had a lot of merit and lot of possibility with one exception, and that was the potential abuse if all clients were included in the proportional voting.

It now appears that the industry has come up with some solutions that appear very promising, and I think, again, the work of the proxy working group, the notion that these votes should not be cast for management, the recognition that governance continues to be important and getting more important, particularly with respect to the election of directors, I think has stimulated a lot very important and creative potential solutions to this issue of brokers voting on behalf of retail shareholders.

So I think a lot of these things we're going to continue to encourage a great deal, work on the educational side. But I think that a lot of it is a recognition that the election of directors is not routine and that brokers simply cannot vote in routine matters on behalf of retail.

MR. BERGER: I think there's also an issue with respect to what currently exists in some of the discussions about whether or not the NSYE should define what is and is
not a contested election. Over the years, that's proven to be very, very difficult I think for the NYSE to do. And in the evolution that we have of proxy contests and of Just Vote No campaigns and various -- the relative ease that now exists for people to start a protest vote, I think it places the NYSE from time to time in very awkward decisions if we retain 452 in a fashion that says the NSYE has to define whether or not an election is contested, particularly from an a priori situation. It's a very difficult determination.

MR. STEVENS: Let me just make one comment, again thinking about proportional voting in the context of investment companies. All of the caveats, as I heard them, that Don made about how you would distinguish between different clients for purposes of assembling the universe that you're voting in proportion to would be there.

But there's another wrinkle, I think, which is what matters would proportional voting apply to, then? In our world at least, if you put elections, uncontested elections of directors aside, there's only one other routine matter left for investment companies, and that's the choice of the auditor. And the Commission some time ago decided that it was -- however important auditors are, and they are obviously very important -- that we didn't have to go to shareholders in order to get them to vote to approve our auditors.

So, if you applied proportional voting only to
uncontested elections of directors, you therefore have
created three categories of mutual fund or closed-end fund
type votes. You have the routine, the nonroutine and the
really nonroutine, which is all the stuff that's nonroutine
now.

So, there are complexities here as would apply to
different issuers once again. And I would just urge before
the Commission or SROs go in that direction that we look very
carefully about the implications operationally from an
expense point of view, and on different issuers of going to a
proportional voting system.

MR. SIRRI:  Don?

MR. KITTELL:  Yeah. I think we agree with that.

Brokers are very careful about voting shares in any kind of
controversial matter. And that's why we think down the road
a client-directed voting strategy that would move
uninstructed shares into some kind of acceptable
client-directed environment would be a superior way to
address this problem.

MR. HORAN:  And I would just add that the concept
behind the client-directed would be that it would not be
limited to the election of directors. It would be, I'm going
to say virtually matters. I will not say that there might
not be some matters that might be concluded should be outside
that. But for virtually all matters.
MR. SIRRI: Well, I hate to be the bearer of bad tidings, but time is passing. You know, this is an incredibly important and also a subtle issue, what seems you might think would have a simple solution, you all have brought up a number of subtleties in it that I think are quite important.

If you would, though, if you'd take a minute or two, I'd welcome you to sum up your thoughts, either what you've already said or any new ideas you have that you'd like to make that haven't come up. David, would you like to start?

MR. BERGER: Sure. I'd like to start by thanking Chairman Cox and the Commissioners and Director Sirri and Director White for having us here. I think it's been a very enlightening and interesting panel.

The goals I think that we all have are the same and easy to describe. We all want and recognize the need for transparency in an age of corporate governance and shareholder activism. We want to incentivize the retail vote as well as institutional investors to actually vote their shares, and we want to reduce expenses in the system and keep the benefits of the current system which I think are -- there's several of them.

I think as we look at the overall system, we have to realize that it's a very integrated and complicated
system. I'm not sure if we were starting from scratch today
or on a blank slate we would come up with the same system,
but it works remarkably well. The reality is that the
overwhelming amount of shareholders get their proxies in in a
timely fashion, their votes counted, and the system does work
today.

I think as we look at Rule 452 that historically
that rule has worked very well for issuers as well as
investors. But I do think the time has come as we go into
this new age of corporate governance, for the NYSE at least,
to step back and not have a rule that provides for brokers to
vote for shareholders in uncontested elections.

That said, I think there are a lot of alternatives
that are interesting and floating out there, and we will
continue to look at these alternatives as a way of figuring
out what's the best way to meet the goals that I think we all
share.

Thank you.

MR. SIRRI: John?

MR. ENDEAN: Well, let me second my thanks to
everyone for allowing me to participate. And I guess I agree
almost with everything that David has said. One of the
things that has emerged from this roundtable for me today is
just how, despite my complaints that I've been on this for
over two years, just how new this argument still is, and just
how many ideas are starting to appear.

I hope that, particularly in regard to the proportional voting project that SIFMA has undertaken, that it continues, that it's continually evaluated, and the benefits and problems that proportional voting may raise are evaluated correctly. I would hate, under the circumstances, to see us move immediately to get rid of the broker vote as it pertains to shareholder elections, because it would raise the cost of the proxy process, particularly for mid-size and smaller companies, without really changing the nature of the vast majority of director elections.

I think reform is possible. I think many of my fellow panelists have come up with some interesting ideas. I hope that they are all pursued, and I hope that they are not cut off by simply getting rid of the broker vote for all director elections.

MR. SIRRI: Tony?

MR. HORAN: I think we are African American that in the institutional investor community, there are a lot of very thoughtful people, and I count among them the colleagues on my Asset Management team who think through their voting policies and try to do so in the best interests of what they consider to be good governance, the particular issues that come before them at the time, and the interests of the beneficiaries of the positions.
The issue that we're specifically focusing on now are the broker non-votes, and those are associated with the ultimately beneficial owners themselves. And so the way to find them a way to have their voice expressed I think is very, very important. Just the elimination of the broker non-vote has the adverse effect of leaving out a lot of people who I think might expect or hope that their vote would be cast.

So some of these other alternatives, and perhaps the timing issue of integrating that with the Rule 452 change might be worth considering.

MR. SIRRI: Cathy?

MS. KINNEY: I'll only be additive to what has been said. I think there has been clearly an evolution in governance. I think the focus on the election of directors is critical and vital to effective governance of issuers. I think that the possibility of a change in 452 has shined a light on the relationship between the brokers and those they represent. And I think a number of solutions are emerging, which have a lot of promise in recentering and refocusing the agency relationship between the shareholder and the agent that is voting on their behalf.

And I think that we can safely go forward with, as I said earlier, publishing this rule and trying to continue to keep pressure on ourselves to find a solution that is
effective in restoring the appropriate governance in the
election of directors between the shareholder and their vote,
particularly in light of retail investors.

And so, we're just going to keep pressure on
ourselves and on our committee and on the industry to
continue to advance lots of creative solutions in a world
where I think -- I can't imagine anything that's more
important right now than who are the directors on the boards
of our public issuers.

MR. SIRRI: Don?

MR. KITTELL: I think we have the most effective,
most cost efficient, most reliable proxy processing system in
the world. And that's not an accident. It's the result of
tremendous investment in technology. It's the result of
tremendous negotiations over the years among all the parties
that you see represented in the panels this week. And it's
the result of regulatory oversight by the New York Stock
Exchange and the SEC for many, many years, who have debated
these issues.

The system is performing well. All the metrics we
use on cost and on service level are excellent. We have some
work to do with issuers who question their ability to
communicate, and they question the integrity and accuracy of
the system. We believe that the issuers can communicate
effectively with all their shareholders. They can send any
communication they want whether it's NOBO or an OBO, they can
do it in a timely manner, and they can do it in a
cost-effective manner.

We also believe that the accuracy and integrity
issues are more of a policy nature than a processing and
accuracy or auditing nature. There are differences of
opinion on how to handle margin accounts and fails to
deliver, and maybe we need to work on that and to educate
people. But I don't think it's an accuracy or an integrity
issue.

We think Rule 452 is a very useful rule, and we are
working to try to maintain it as best we can. Proportional
voting is one way to do it. But we also think that down the
road some sort of client-directed voting solution is a better
solution than just voting, having brokers voting uninstructed
shares.

We have over the years worked with the various
issuer groups and investor groups and regulators, and we hope
to do so in the future.

Thank you.

MR. STEVENS: I just want to say thanks once again
for allowing me to participate. And we're pleased to be able
to voice our support for the proposed amendments to Rule 452
as filed yesterday by the New York Stock Exchange with the
SEC.
MR. SIRRI: Chairman Cox?

CHAIRMAN COX: Well, I know you're looking to me to ask another round of questions, right?

(Laughter.)

CHAIRMAN COX: I wish that I could, but I want to just add the Commission's thanks for each of our panelists' participation. We're learning a great deal by listening to this conversation and also by reviewing all the documents that you provided us with ahead of them.

So, thank you very much for what is the commencement of a dialogue that will continue. As you know, we intend to do a rulemaking on this topic this year. So this very, very timely and very significant.

MR. SIRRI: All right. We intend to have a very short, five-minute break while we get the next panel up here on Shareholder Communications.

(A brief recess was taken.)

PANEL THREE -- SHAREHOLDER COMMUNICATIONS

MR. WHITE: Welcome back to our final panel of the morning on Shareholder Communications. I am joined at the moderator table by Betsy Murphy, who is Chief of the Office of Rulemaking in the Division of Corporation Finance. I should also mention that she has participated as the observer in all the NYSE's Proxy Working Group activities and is quite an expert on the subject, so I'm going to be turning to Betsy
from time to time as we go forward here.

In this panel, we want to look generally at the structure for -- of how companies communicate with their beneficial owners. It's a topic that has come up a number of times this morning. I also would like at the end to spend a few minutes exploring how the use of the Electronic Shareholder Forum, which was discussed at our first roundtable two weeks ago, might provide an alternative method of communication. So we'll kind of save that as a topic near the end.

So let me introduce the panel, starting at the far end. Anne Faulk, who is the CEO of Swingvote. Tom Lehner, who is the Director of Public Policy at the Business Roundtable. Kevin Moynihan, Managing Director at Merrill Lynch. Bev O'Toole, Vice President at Goldman Sachs. And Charlie Rossi, Executive Vice President at Computershare and also the President of the Securities Transfer Association.

Thank you all very much for being here, our final panel of the morning. What I'd like to do is start I guess with the first and kind of basic question, which I'm going to direct to you, Tom, to start with, and then I'll switch over to Kevin, who may have a different view.

But under our existing proxy rules, the question is, do companies have an adequate means of communicating with their beneficial owners? And of course, I was suggesting
that you put in a petition. You said it actually preceded
you by six months at the BRT, but obviously the BRT has put
in a petition to us on rulemaking in which you seem to be
answer this question no. But I -- can you elaborate a little
bit?

MR. LEHNER: Sure. Well, first let me say, there's
nothing like being the first speaker before lunch. But to
answer your question, in a word, no. I think there's been a
lot of agreement. We've heard some of this today, that the
system is relatively outdated. It's cumbersome. It's
indirect.

And I don't think we're alone in our view on that.
I think earlier we heard a little bit from Cathy Kinney of
the New York Stock Exchange when they had a Proxy Working
Group they identified some of the inadequacies in the current
system. And a couple of years ago, we were joined in our
view and in our effort to have the system reexamined and
reformed by, you know, some pretty prominent groups that work
in a lot of the details of this, the National Association of
Corporate Directors, the National Investor Relations
Institute, Security Transfer Association, and the Society of
Corporate Secretaries.

You know, not to belabor the point, but our basic
premise is that the owner contact information, it's held by
brokers and banks. And in order for companies to communicate
with them, they can't do so directly. They've got to go
through them and go through other intermediaries.

That is not to say that the system hasn't had some
success and has not worked well, and I think generally it has
worked well up until now. But given all the advances in
electronic medium and technology and so forth, and also given
this environment of increased shareholder activism and
increased need to improve upon communications, we should
certainly take advantage of the opportunity, and the system
can and should be improved upon.

MR. WHITE: Kevin?

MR. MOYNIHAN: First of all, I'd like to thank the
Commission and the Commission staff for having me here today.
It's an honor to be participating in this discussion.

Brokers really are intermediaries, and the system
that has evolved as explained by DTC over the last 30 years
has so many benefits for the efficiency of the system, I
don't think there's any real way of backing up and making the
system work differently.

Brokers are in the business of doing transactions
for clients and advising them. We're not really in the
communication business. By the same token, we're willing to
facilitate any kind of communication issuers wish to make to
our clients, and Broadridge, which has the biggest proportion
of the market in terms of servicing brokers and banks, has
means to communicate within 24 hours any communication that
an issuer wants to communicate.

    Obviously, it's a complicated process. If you're
doing it in connection with a proxy meeting or an annual
meeting and there's been a record date struck, you spin the
computers and you create a record list of shareholders at
that point in time. To communicate more often requires to go
through that process again. It does get to be an expensive
process.

    It used to be that issuers sent out semi-annual
reports, but issuers stopped doing that several years ago, I
think mainly because of the cost. But, you know, I think
working on the stock exchange's Proxy Working Group for the
past 18 months, the brokers have been saying all along, we're
willing to work with the issuers. Let's sit down and find
practical solutions to the desire to communicate more. But
communication is expensive, and it really, at the end of the
day, I think is a question of expense.

    MR. WHITE: Commissioner Campos?

    MR. CAMPOS: Just very quickly. How should we look
at the fee that brokers get and then share with the other
intermediaries for communication? Does that -- is there an
incentive with that one way or the other? How does that work
in your view?

    MR. MOYNIHAN: The stock exchange prescribed fees
are designed to reimburse brokers for their costs. Until eight years ago, Merrill Lynch was in the business of providing proxy services for ourselves as well as other brokers. And we finally decided we didn't have the economy of scale to make it economic to stay in that business, so we sold our business to ADP.

I think Broadridge will tell you that most brokers receive nothing from the proxy process. The reimbursement goes to cover the costs. Most of the proxy expenses these days are postage and printing, not the fees involved with getting the communications out. So, I don't think there's ever been any concept of the element of the reimbursement of costs for the process of distributing the material has any element to encouraging communication.

Now having said that, Merrill Lynch last December launched what we called the Investor Mailbox. So with our online access to Merrill Lynch, a client can log on and see his mailbox of all his pending proxies. And that kind of facilitation of using technology to enhance the ability for retail investors to see their pending proxy votes and decide right then and there whether they want to vote them electronically is the kind of thing the industry could do more of.

MR. CAMPOS: A follow up. If there were to be a reduction or even elimination of this intermediary fee, you
know, what impact would that have?

MR. MOYNIHAN: Well, you know, the expense of distributing materials for eight or ten thousand meetings a year is considerable. You can see it by Broadridge's revenues.

MR. CAMPOS: But couldn't brokers be the charging agents to the clients, as opposed to the issuers?

MR. MOYNIHAN: I suppose that's a decision for the Commission to make, to decide whether the cost of communications --

MR. CAMPOS: I'm asking you to sort of explore it and give me the pluses and minuses of it.

MR. MOYNIHAN: I think -- well, for one thing, I think there's a number of reasons why the retail investor -- I've been in the brokerage industry 30 years, and I think I've learned something about the retail investor behavior. And the fact that retail investors only vote about 30 percent of the time is I think from the fact that today, investors are diversified in their portfolios. So if they own 20 or 30 stocks and they own two or three hundred shares, there's not a huge incentive to vote any particular stock.

Secondly, investors vote every day. They sell their stock. I think one could argue that holding a stock is a vote for management. When retail investors do vote, they vote 99 percent in favor of management. So, you know, as far
as shifting the cost of that process to the investor, I'm not sure what really it accomplishes, because retail investors are sort of speaking already and saying they have limited interest in voting because it doesn't really mean that much to them.

We debated it at the Proxy Working Group, how can you increase consumer investor voting? I think the only answer is spending money, and a lot of money. And, you know, I live in Connecticut. We had an election last November, a very competitive election. I think $40 or $50 million was spent on the election, and I think 40 percent of the electorate turned out. So, it's a matter of spending money. And someone's got to spend that money. Brokers are not in the business of communicating for the issuers.

MS. O'TOOLE: I would just add that there's a lot of questions about the fees that, you know, the brokers and Broadridge -- you know, Broadridge collects and then pays back to the brokers any, you know, over-allotment. But one point I'd make that my Proxy Department made pretty clear to me, even though we've outsourced this function to Broadridge, there is still considerable effort internally in having this proxy system work well.

We have a robust proxy infrastructure in house, and they manage the relationship with Broadridge. They oversee an audit of what Broadridge does, and they perform certain
services that Broadridge doesn't perform. And as a result, the Proxy Department is by no means a profit center.

MR. WHITE: Bev, I know this topic has been a topic of spirited conversation at the subgroup of the Proxy Working Group that you're on. Could you tell us a little bit about the back-and-forth there?

MS. O'TOOLE: Sure. As you know, the New York Stock Exchange did a great job putting together the Proxy Working Group and getting lots of different viewpoints and presentations from all the stakeholders. We formed a subcommittee on this very topic to discuss shareholder communication, and this was done because the recommendation of the Proxy Working Group to make director elections nonroutine led to many people feeling we needed to address shareholder communications simultaneously.

As you can imagine, no conclusions were reached, but my main goal on the subcommittee was to try to understand what specific issues or problems issuers had with the current system. I was a bit of a broken record on this. There are general assertions about how cumbersome and expensive the process is, but I was hoping and still hope we can talk about specifics to see if there are ways to address problems in the context of the current system before overhauling a very, you know, expensive and time-consuming process built up over many years.
Some other key points I would make up that came up through the Proxy Subcommittee, and my views on them in particular, I do think the current system works. And I say this from the somewhat unique perspective of being issuer's counsel at a broker-dealer. So wearing sort of two hats, I think that it is very important for issuers to reach their shareholders, and more so now than ever. I couldn't agree more with that.

But I also feel we have the ability to do that. We can send out any message to shareholders in a very effective and efficient manner. In fact, a company with which I am intimately familiar, had a supplemental proxy mailing required this past season. Friday, late afternoon, the decision was made to mail. And early Monday morning, those mailings went out, both electronically and by paper. And it could not have been done any more efficiently in my view.

MS. MURPHY: Charlie, you're on the record-holder side of the proxy distribution business. If the Commission did decide to change the shareholder communications rules to let companies have the NOBO list to distribute proxies directly to the beneficial owners, how would that change the system?

MR. ROSSI: Okay. Well, first of all, thank you for inviting the Securities Transfer Association here today. It's a topic that we are vitally interested in on behalf of
our issuers.

On an analogous front, today transfer agents provide a similar service for 401(k) plan providers as well as employee plan holders. We take files in today from a variety of sources and combine it with a registered database and leverage the technology that we have in place. That could be the Internet, our interactive voice response for voting, householding, a lot of the similar things that Broadridge does today, we actually do.

If issuers were allowed to get the nonobjecting beneficial owner information, we would do the same thing. We would take this information in. The first priority we would have would be to reconcile it. We would combine it with the other shareholders, which by the way would greatly facilitate the Commission's notice and access model. Because then we would take some of the guesswork out of how many people might call in to get paper, which is a main ingredient of the expense side of notice and access which we're working with our clients on.

So, putting the information together, reconciling it, leveraging the technology, a lot of which is in place today. One of the concerns that the brokers have had is not so much divulging the names to the issuer. It's pretty much divulging the names, are the names getting into the hands of their competitors? So what we would do is we would obviously
enter into privacy arrangements and confidentiality agreements with the broker-dealer so as to retain those accounts in their name and not subject them to other broker-dealers getting their hands on them.

Obviously, the details, the mechanics of this would have to be worked out, but I'm sure with all of the industry representatives, some of whom are round this table, we could get it done. And it would allow issuers access to their beneficial owners and create transparency that isn't there today.

And I agree with someone who said, you know, what's happened over the years because of the cost of getting information out to the beneficial owners, issuers have stopped communicating with their beneficial owners except for annual meeting time. The cost is very high.

MS. MURPHY: Thank you. While we're still on the subject of NOBO list, I just want to go back to Tom just for a brief minute and ask about the BRT petition. It focused on companies getting access to the NOBO list for proxy distributions. What about shareholders? We got a number of comment letters on the petition that are on our web site, and some of those said, shouldn't shareholders also have the right, then, directly to use the NOBO list directly for distributions?

MR. LEHNER: Right. And, you know, I think it's
certainly appropriate for shareholder groups and shareholders individually to communicate with one another for those purposes. I think clearly in today's environment where you have concerns about, you know, spamming protection and privacy protections with respect to, you know, outsider third parties, if you will, that those would have to be safeguards that would have to be built into the system.

But if such a system were built, and it also enabled shareholders to communicate directly with one another, you know, far be it from me to object to that.

MS. MURPHY: Thank you. We've already had some mention this morning about the OBOs and the NOBOs, and the fact that in the BRT petition the idea would be that there should no longer be a category of objecting beneficial owners. And would you tell us a little bit about your views and about whether shareholders should be able to have -- to keep their identities confidential?

MS. FAULK: I think it's important, and while Swingvote doesn't have a dog in this fight, to go back to the genesis of the corporate governance industry and to understand that the Department of Labor got involved in this arena because corporations were pressuring their investment banks, their commercial banks and their investment managers to vote in ways that made management happy but were not necessarily in the best interests of the shareholders.
And I think anybody in the corporate governance business would tell you that one of the unintended consequences of the NPX filings was to take a number of mutual funds who were absolutely at the forefront of good governance and engagement, and once they had to post how they voted on the shares of their clients, there was a dramatic change. And those mutual funds who were, like I say, very much engaged in the process all of a sudden became rubber stamps for management.

So, my background, having been involved in this for almost 20 years, is that the confidentiality of the voter is absolutely critical. Also, for the objecting beneficial owner on the retail side. An investor should not lose the right to privacy just because he's invested in a company. And whether it's an employee of a company or someone who just doesn't want to be called at dinner, shareholders should absolutely have the right to that privacy. And I think to start tinkering with that is a very dangerous thing.

At Swingvote, we founded the company based on the idea that the confidentiality was key and that that should not be something that was ever in danger. But also having said that, to understand that it's very important to companies to be able to talk to their shareholders, now more than ever, with the majority vote for directors, with hedge fund activism. Companies are really beginning to understand
that, whether it's the institutional investors or even now particularly the retail investor, you have to engage them. You have to be able to talk to them.

So what we did, we had the same idea that Chairman Cox and the Commission did, which is let's use technology to facilitate this communication so that you give companies the abilities to easily talk to the shareholders, you give shareholders the ability to maintain their privacy, and that you do this in such a way that everybody gets what they want.

So, one of the things that we built into our platform -- and Swingvote originally started as a delivery and voting platform for institutional investors. And nothing is more important to companies than to be able to talk quickly to their institutional investors.

So, part of the technology that we built, which we just received a patent on, is a thing called Electronic Solicitation, that allows a company to send us a text message, an audio message or a video message that gets embedded in the ballot. So it gives companies the ability to talk to their shareholders, literally at the moment of decision, to be able to explain a proposal, clarify an issue.

And the other thing that we look at Electronic Solicitation particularly on the retail side is, if you want to engage the retail shareholder, if you want to get people to start voting, you have to do three things, all of which
technology can do. You have to make it easier to vote. You have to make it easier to communicate.

You have to educate -- well, I said three. You have to make it easier to vote. You have to educate the retail investor, and part of Electronic Solicitation is to give individual investors access to the same conversations that institutions have enjoyed for years, and that is to be able to hear management talk about why we need this particular proposal or to put something into context or to clarify an issue.

Institutional investors have always enjoyed that. So part of engaging the retail shareholder is to give them access to these same conversations, and as well as to make it interesting. Let's face it. Nobody ever read a proxy statement and was riveted by the language. The transparency -- except for this fellow right here.

(Laughter.)

MS. FAULK: The transparency and the actual communication is the key to engaging retail shareholders. And how do you do that? It's a you too world. You want to talk to him face-to-face or as close as we can do that for you, which is take a video, explain why you need to reprice the underwater options or why you've selected these particular directors and talk to your shareholders at the moment they're going to make that decision.
All of this is based on the key to corporate governance is confidentiality of the shareholder.

MR. WHITE: Commissioner Atkins?

MR. ATKINS: Yeah. And I just wanted to follow up on one statement you made, because I agree with you. I applaud your efforts. But you had made a statement earlier that with the publicizing of votes by mutual funds that they tend to vote more for management than otherwise. I was just curious if you had any empirical evidence of that, because I guess what we've been hearing is more that mutual funds are now treating it like a compliance function, and they have pretty much outsourced every -- or many of them have outsourced this to some of these proxy advisory services, and then they slavishly pretty much follow what is being advised to them.

So I was just curious.

MS. FAULK: Well, I think regulation has had one intended consequence, and that is to make people very reticent to vote outside of their policies. Because that's something that people look at, and whether it's looking for a pattern of conflict of interest or just unhappiness of management to say, you know, you usually vote for things for management and you voted against us on this.

So I think one of the unintended consequences of that is to have mutual funds be more dependent on proxy
advisors. It's also the insurance of being able to point to someone else and say they made us vote against that. That was not something we ordinarily would have done. And it's not empirical evidence, but it is having been in the corporate governance business and knowing the history of -- when I say activism, I don't mean anti-management activism, but an interest in good corporate governance and a collaboration about how you push companies to -- how you push boards to be more advocates for shareholders, and some of the shareholder rights.

The very mutual funds who used to be famous for this now are being pilloried because all they do is vote with management. And I believe that has to do with the fact that they used to have air cover to do the right thing, and now because it is so public, they are more reticent about taking a stand to vote against the proxy of somebody whose billion dollar pension fund they may manage.

MR. ATKINS: Well, I think that's -- well, I mean, this whole issue probably, you know, after four years of a rule like that, it probably ought to be part and parcel of what we're looking at.

MR. WHITE: Commissioner Campos?

MR. CAMPOS: I'm interested in just having a response, because I've had institutional investors indicate to me, and I'm sure to other Commissioners, that they have
basic suspicions of a direct -- of a system in which the
issuers control the shareholder list.

And that may come from some of the, you know, the
historical pressures and so forth and maybe feeling that if
they want to get their particular issues to the other
shareholders going through the issuer, you know, could create
a situation where it slowed down, where it's not
effectively -- they drag their feet and do other things that
could work on the outcome.

Now maybe there's an obvious technology solution or
a mechanic solution, but that seems to be something that's
out there, and I wouldn't expect that -- I would expect that
we'd get a lot of those kinds of comments if we were to try
to go to a direct issuer communication system.

MR. LEHNER: I think it's a good question, and it's
certainly a fair one, one that's been raised before. And our
perspective is we don't view it as an issue of control. We
view it as an issue of access. And I think there are certain
technological ways to build that kind of system. I'm not the
expert on that, but there are a lot of people, probably a lot
of them in this room, that certainly are.

Just to put a little bit different perspective on
what Anne was saying, you know, confidentiality is, you know,
certainly one aspect of good corporate governance, but I
think in today's day and age, the key that we're all trying
to address here, whether it's proxy access or voting mechanics or, you know, rules of the stock exchange, we're all trying to foster better communications.

And, you know, investing in a company, if we're talking about individual shareholders that are NOBOs and OBOs, and certainly this is true of the institutional investors as well, you know, that's an affirmative act. And effective communication at the end of the day should be a two-way street. And when we discuss shareholder rights and effective communication, I think we have to understand that with those shareholder rights, also comes shareholder responsibility.

And I do not think it's unreasonable -- with all deference to privacy concerns, and I think they should be addressed -- I do not think it's unreasonable for individual shareholders not to have their contact information made available to the companies that they have chosen to invest in.

MS. O'TOOLE: I'd like to respond. I think the clients at the brokerage firms take their privacy rights very seriously. They have to actively choose to be OBOs, and I agree with the points Cathy made in the prior panel. Maybe it's re-soliciting to make sure they understand. It's education and it's re-soliciting to make sure that they're choosing to be OBOs and that they understand that.
MR. CAMPOS: I'm not addressing the confidentiality point, which I think has been very well made. What I am saying and trying to get reaction on is the idea that shareholders would have to go to the issuer to communicate to the shareholders -- to other shareholders. And the idea that that is a -- maybe not an honest broker in their minds. Well, right now, however expensive it is, whether through ADP, through the other services, it's an expensive but, quote, "indifferent and honest broker" in terms of getting the communication out. How do we solve that concern?

MS. O'TOOLE: Well, I think that's a valid concern. And if we had an investor on the panel, I'm sure it would be raised by now, too. But I do think that the problem is the tabulation, not only just the communication. Because if the issuer is taking over the process, just for the NOBOs, let's presume, presumably they're taking over the tabulation as well, and that's where I think it actually gets quite troublesome.

MR. CAMPOS: I'm still hungry, but I guess I have to pass, because I'm not getting any more feedback on that issue.

MR. LEHNER: I could add a little bit to that. It's not as if under an effective communication system the investor would always have to go to the company. The communication should properly flow the other way as well. My
point is that they should do so without having to go through
intermediaries, whether they're brokers, banks or, you know,
other service providers.

And again, I think with the technology that exists
out there, it makes it very possible for that to happen. A
company, you know, and the proxy season is several months
long, as we all know. And given the costs associated and the
cumbersome process involved, the companies typically sends
out its annual represent, and then they send out a proxy
statement. And that's pretty much it. But there's no reason
why under a different system there couldn't be several
communications that go out to address concerns as they're
raised during the proxy season.

As, you know, we all know, proxy season, the issues
as they're discussed and debated, the conversation evolves.
And, you know, our view is we want to give companies every
opportunity to put their viewpoint forward so that the
investors have the benefit of having as much information as
possible so that they can make informed decisions. They
don't always vote. But we want to make sure that that's not
because they're not getting adequate information that is, as
Chairman Cox has talked a lot about, is, you know, easily
understandable and in plain English as well.

MS. MURPHY: Chairman Cox?

CHAIRMAN COX: Well, I'm pleased to hear the drift
of the conversation headed toward technological solutions because a lot of the difficulty that we have had in the past has focused on who has access to the shareholder list, who pays the costs of distributing information to the shareholders, how do you preserve the shareholders' confidentiality that they request, and so on.

All of these issues are rendered either moot or very susceptible of easy solution if we're operating in an Internet world. The encryption and unique identification that it offers, you know, helps you with the confidentiality piece. The idea that Anne, you've been talking about, of a communications hub or an information consolidator, is something that would be extremely convenient for brokerage customers. In fact, I think you already do some of that. You were talking about your mailbox and so on. That's the way you're going anyway.

So that what we're really looking at in the future is global distribution of information that can be linked to other servers. It might not be clear to me when I go to my brokerage web site of the future and I click on Your Mailbox or what have you that I'm actually linking to things that are residing on the servers of the issuer, or maybe it's a service that you contracted for with Swingvote.

There are so many different ways to skin the cat. But I'd just be interested in hearing you talk about what in
the future we might do to sort of have our cake and eat it on these points.

MS. FAULK: Let me speak to that, because that's really sort of the mission of Swingvote. If you begin with the ability for a company to talk to its shareholders from the ballot, and I think as fast as the world changes and as fast as corporate circumstances change, it's not a one-time thing. You can send a message to your shareholders. You can come back six days later and say maybe we didn't make ourselves clear, and this is the reason why you ought to vote with us.

The idea is to facilitate that communication or build that bridge, if you will, so that they can start talking to each other and ultimately move this away from the ballot; that there will be a corporate communication utility that's run so that there's a central place that you can hear from your -- the managements of the companies in your portfolio, as well as a central place where you as a shareholder can communicate back to the company.

So whether it is --

CHAIRMAN COX: And do you contemplate also that you'd be able to communicate with other shareholders that way?

MS. FAULK: We have. That's the thing that freaks everybody out, so, that's kind of the one piece that's going
to be left as the final evolution. But absolutely. A place
where --

CHAIRMAN COX: I recognize that our proxy rules
inhibit that right now.

MS. FAULK: But technology is available to have one
platform so that you could come to hear from the CFO of one
particular portfolio company talk about the stock option
plan, the chairman of the nominating committee can talk about
why they've selected their directors, where instead of having
access to the ballot, a shareholder could go to the company's
web site, see exactly what the search firm and the nominating
committee are looking for, recommend or suggest a director,
attach a resume.

What we're trying to do is build collaborative
tools so that the communication between companies and their
shareholders isn't a once-a-year thing, it's an ongoing
thing. And that's why we've taken Electronic Solicitation,
which is a mouthful, to describe that bridge, and we're sort
of call it "Setu," which is the Sanskrit word for "bridge."

So we want to make that an ongoing --

MR. CAMPOS: Let me interject. If this were a
contested situation, okay?

MS. FAULK: Mm-hmm.

MR. CAMPOS: I've got tensions up and shareholder
groups are vying with the issuer and potentially against each
other, describe how that system would work and how
shareholder groups would be getting their positions to each
other and the company, you know, in other words, everyone
trading --

MS. FAULK: Well, the way it works --
MR. CAMPOS: -- positions.
MS. FAULK: -- with us is we have the positions, so
we work with the brokerage firms or the proxy advisory
platforms so that we know who has access, who is allowed to
see that message. And we don't want to be the gatekeeper for
communication. So, particularly when it comes to a contested
circumstance, we're going to let the SEC decide who is an
authorized party to do that. We're simply the technology and
the conduit for that communication. So if somebody comes to
us and says, I filed with the SEC, I'm running my own slate.
I want to send a message to the shareholders, we're happy to
take it.

Same thing for companies, so that it's really going
to be, once somebody has filed with the SEC, and they have
the transcript, we are simply the mechanism that gets them in
front of all the shareholders. And then authorizes to make
sure that it's really a private network and that nobody sees
that who is not a shareholder as of record date.

MR. WHITE: I think looking at the hour and lunch
being on the other side of this panel that it's probably time
for us to wrap up. So, Anne, we'll start with you to make
your closing comment. Just about a minute, please, for each
person.

MS. FAULK: Okay. First I want to say how much we
appreciate being able to come and talk about what we're
trying to do to facilitate communication between companies
and shareholders. And I want to say to the Commission, we've
been thrilled to watch what you guys have done about using
technology to solve the problems of this industry and to
facilitate really for the very first time the ability for
companies and shareholders to collaborate for better
companies.

MR. WHITE: Tom?

MR. LEHNER: Thank you. I also want to thank you
all for including myself and the Business Roundtable today
and just leave you with this point. On May 7th, and then
today and then again tomorrow, you'll hear on a number of
topics. And one of the points we want to leave you with is
as we've been saying, not just with respect to our petition,
but on proxy access and other issues, these issues are in
fact all interrelated.

And it's important that we get the mechanics done
right before we start discussing fundamental changes to the
successful model that has benefitted our economy and our
shareholders so well. And I think you all have done that by
including a broad range of different panel discussions and
certainly panelists, and we would hope that as you go forward
that you don't try and solve these problem individually
without realizing the impact that they have on the other
issues that are on the table as well.

Thank you.

MR. MOYNIHAN: Again, I thank the Commission for
having us today. I agree that technology is probably a large
part of the answer and a lot more can be done. The broker
representatives on the Proxy Working Group insisted that
there be a second phase of the Proxy Working Group
discussions, and we had three subcommittees, one of which was
Communication and the Proxy Process. Another one is Investor
Education.

And as our deliberations wore on, it began to sink
in to a lot of people that investor education and
communication is expensive, and can you really move the dial
from 30 percent to 35 percent or more? So I'm a realist in
that regard. I know how passive retail investors are, and I
also know there's a certain percentage of retail investors
that say I don't want to get the stuff at all. I want to opt
out from having it sent to me.

The real answer is real electronic delivery, as I
mentioned. We've developed an investor mailbox. Access
equals delivery is going to denigrate the retail vote, and I
think efforts to develop real electronic delivery where the proxy material is being put in a convenient way to the investor, along with services like Anne's, which are quite impressive as far as making issuers be able to communicate.

I will say, too, though, the issuers have not engaged with the brokers, and more can be done to engage and look for constructive solutions.

MS. O'TOOLE: Thank you for inviting to participate today. I believe we have to balance the issuer's need for the information regarding beneficial owners and the extent to which they could use it, on the one hand, with the very real benefits of the current system on the other. The system is viewed as impartial, accurate and reliable. It also safeguards the important privacy interests of the investors and the confidential client lists of the brokers.

I'd urge the Commission that before taking steps to re-engineer such a system based on general assertions that it's cumbersome and expensive, it ascertain specifically what the problems are and whether those problems can't be fixed in the context of the current system to everyone's satisfaction. We shouldn't overhaul a system that has taken a significant amount of time, money and effort to implement before trying to fix it from within.

There hasn't been an alternative described in any sufficient detail to determine whether another approach would
really be better. And direct communication from issuers may not be tantamount to effective communication with shareholders. The brokerage community, of course, would be willing to participate in any fact finding or analysis as needed.

Thank you.

MR. ROSSI: Again, the Securities Transfer Association, we want to thank the Commission for taking this issue up. It's one that we have focused on for a long, long time and it's wonderful to see it getting this amount of attention.

Just to sum up our position, a system that allows direct communication is in our view superior to one that positions intermediaries between a company and its investors, unless the investor specifically appoints an intermediary to act on its behalf. There are good corporate governance reasons for adopting a direct communications model.

A regulatory framework that prohibits transfer agents or other major service providers from combining Street name and registered mailings is in our view anti-competitive and represents an outdated feature of a modern market. A pro-deregulation legal framework that facilitates genuine competition, market pricing and one-stop-shop servicing will, in our view, deliver greater innovation, lower cost to issuers, and greater efficiency.
Additionally, it will remove significant duplication of processes and costs to issuers that currently have to deal with two providers; namely, the issuer or its transfer agent in Broadridge. Importantly, deregulation will remove the New York Stock Exchange from setting regulated prices. And our view, price setting is best left to the competitive market to resolve. An issuer choice, issuer pays model would produce this outcome.

Thank you very much.

MR. WHITE: That concludes our final panel for today. I would like to thank the panelists, the Commissioners, the public for listening. Tomorrow morning we're going to be starting again bright and early at 9:00 a.m. with our final roundtable. We'll actually have the stakeholders all here tomorrow to talk about proposals by shareholders. Look forward to seeing all of you then.

Chairman Cox, would you like to make a concluding remark?

CHAIRMAN COX: Thank you. This is an opportunity on behalf of the Commission to thank all of our panelists who have done a splendid job of educating us here this morning. Thank you very much for the significant contribution in time and intellectual energy that you've made to this effort. I also want to thank John and Betsy as we're wrapping up here. You've been excellent moderators. And all
the staff who have helped prepare what has been now three
outstanding panels and an excellent roundtable.

    Thank you very much, again, to our panelists, and
thanks to each of the Commissioners. As you can see, there
is a great deal of attention here from the full Commission.
And that's because we really are engaged in a rulemaking, and
this really is going to happen this year. So, your
contribution is very timely, very important. Thank you very
much.

    (Whereupon, at 12:31 p.m., the Roundtable
Discussions Regarding Proxy Voting Mechanics concluded.)

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