

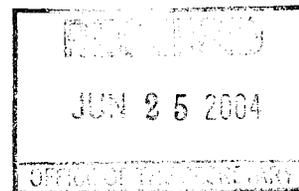


## Securities Industry Association

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June 24, 2004



Mr. Jonathan G. Katz  
Secretary  
U.S. Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, DC 20549-0609

Re: File No. 4-493, Request for Rulemaking Regarding Shareholder Communications

Dear Mr. Katz:

The Securities Industry Association (SIA) would like to comment on the Petition for Rulemaking Regarding Shareholder communications, submitted on behalf of the Business Roundtable (BRT) on April 12, 2004. The BRT requests in this petition "that the Commission conduct a thorough review of the current shareholder communications system" and recommends "that the Commission consider requiring brokers and banks to provide companies with contact information for all beneficial owners, and permit companies to mail proxy materials directly to all beneficial owners." The BRT asserts that "the current communication system is overly cumbersome, circuitous and expensive," and "as a result, it is very difficult and expensive for companies to communicate with their beneficial owners."

SIA has been actively involved in the development and operation of the current shareholder communications system. SIA believes that the system -- its structure, operation and economics -- is functionally far superior to the system it replaced and also superior to any alternative that has yet been proposed, including the proposal described in the Business Roundtable petition. We have reached this conclusion based on extensive discussions with system participants and on the financial and operational metrics and audits we use to gauge its effectiveness. The strength of the system is the result of a balancing of the requirements of all participants -- 14,000 large and small issuers, 800 large and small broker-dealers and millions of large and small investors. The system accommodates the very real concerns of investors to remain anonymous and the very real concerns of broker-dealers and banks to maintain confidentiality of their client contact information. As a result, we were surprised by the BRT's petition for rulemaking because there have been no discussions between the BRT and SIA or its members or with the systems operator (ADP) about these concerns, or any indication that shareholder communications were not effective, in advance of the filing.

SIA's member firms have a strong motivation to serve the members of the Business Roundtable, as well as other issuers. Corporate issuers and their shareholders are clients of securities firms. There is absolutely no reason for SIA member firms to operate a shareholder communications system that is less than optimal for all of that system's participants. We believe the current system enables corporate issuers to communicate clearly and cost-effectively with their street name shareholders. We are confident in its efficiency, accuracy, reliability and functionality.

At the same time, we recognize the opportunity to make the system more effective through technology and the reduction of manual and paper processes. We have achieved significant results in this regard. Issuers have achieved savings of an estimated \$350 million per year as a result of technological innovations that have reduced mailings through "householding" accounts, the elimination of duplicate materials and electronic vs paper communications.

## PROXY VOTING REVIEW COMMITTEE

### REPORT TO THE SECURITIES AND EXCHANGE COMMISSION EXECUTIVE SUMMARY

#### Purpose of the Proxy Voting Review Committee ("the Committee")

In the Spring of 2001, the Committee was created to bring together various segments of the securities industry which are involved in the solicitation of proxies from securities owners who hold their securities in street name. This private initiative was encouraged by the U.S. Securities and Exchange Commission.

The purpose of the Committee was to provide monitoring of the proxy voting process for beneficial shareholders of actively traded public companies through:

- Regular review of all aspects of the process to ensure the fairness and accountability to all constituencies involved;
- Evaluating reduction of costs and innovations in the process through the use of technology and other cost-saving mechanisms;
- Annual reports on their activities to the United States Securities and Exchange Commission and self-regulatory organizations;
- Making public the Committee's annual reports and availability to any party upon request.

#### Focus of the Committee in 2001

During 2001, the Committee held eight meetings covering and focusing on:

- Reviewing the proxy process and how well the system is meeting the needs for all constituencies;
- Addressing the appropriateness and fairness of fees under the present system;
- Making recommendations regarding the pilot project.

#### Committee Members

The Committee membership includes:

- Rhoda Anderson – President of Rhoda Anderson Associates, LLC, a proxy system consulting firm
- Kenneth A. Bertsch, Director of Corporate Governance at TIAA-CREF
- Brian T. Borders – President of the Association of Publicly Traded Companies
- Richard J. Daly - Group Co-President of ADP Brokerage Services Group
- Janice Hester-Amey - Principal Investment Officer, Equities and Corporate Governance of the California State Teachers' Retirement System
- Donald D. Kittell – Executive Vice President of the Securities Industry Association
- Stephen P. Norman - Secretary of American Express Company (representing the ASCS)
- James E. Buck – Senior Vice President and Secretary of the New York Stock Exchange (recently retired)
- Gordon Garney – Managing Director of the Council of Institutional Investors
- Shirley Weiss – Counsel, National Association of Security Dealers
- Richard H. Koppes – Of Counsel to Jones, Day, Reavis & Pogue and the former General Counsel of CalPERS, serves as staff/facilitator to the Committee
- David W. Smith – President, American Society of Corporate Secretaries, is a participant in the Committee meetings

### Some Findings of the Committee

- ♦ Institutional investors require that the highest level of services be maintained and that technological investments be made to ensure the accuracy and reliability of the proxy systems. Institutions had significant concerns around a proposed idea to allow issuers to control the beneficial process.
- ♦ During its deliberations, the Committee received extensive evidence that the pilot fee schedule successfully reduced the total costs to issuers for the proxy process.
- ♦ The services required for street processing are very different, more comprehensive and much more complex than the services provided for registered processing.
- ♦ The following services, although not required, have been provided for beneficial processing under the existing fee structure. Registered processing, while not requiring all of these services, charges additional fees for services such as telephone voting, internet voting, electronic distribution, householding, etc:
  - Fiscal Year End Profile Distribution to 12,000+ Issuers
  - **Search Card Notification Processing**
  - Ad Hoc Request for Material Estimates
  - Consolidated Search and Proxy Record Date Shareowner Positions Material Requirements Request to Nominee/Clients (across 800 nominees)
  - Provide Nominee/Client with Report Confirming Total Positions and Shares Transmitted for Each CUSIP (across 800 nominees)
  - Rule All Proposals (Based on NYSE)
  - Assignment of Proposal Code
  - Addition and/or Deletion of Record Date Beneficial Owner Name and Address Information
  - Vote Reporting by Nominees
    - 15/10 Days; 9 Days Before Meeting Through Day of Meeting
    - 2 Vote Reports Day Before Meeting
    - Day of Meeting Votes
  - Electronic Voting Transmission to Solicitor and Transfer Agent
  - Vote Inquiries (Banks, Brokers and Institutions Not Voted)
  - Consolidated Voting Across Nominees
  - Confidentiality of Client Beneficial Shareowner Data
  - Exception Processing
  - Co-Trustee Processing
  - Internet and Telephone Votes for 12,000+ Issuers
  - Internet distribution for 12,000+ Issuers
  - DTC Over Vote Monitoring
  - Vote Confirmation Reporting
  - Advanced Record Date Notification
  - Meetings with Dissenters Rights Reporting
  - Non-Mailed Accounts as of First Issued Vote Reporting
  - Closed Meeting Report
  - Bank, Broker Confirmation of Mailing
  - Bank, Broker Vote Confirmation Summary
  - Disaster Recovery
  - Interactive Voice Response System
  - Affidavit of Compliance (Self-Reporting Mechanism Between ADP and its Clients as Required by NYSE)

- Annual Procedural Audit Report as Required by NYSE
- Weekly Measurement Criteria
- Vote Statistical Audit
- ISO 9002 Certification
- Consolidated Invoicing (Across 800 Nominees)
- Building and Maintenance of Householding Database (Across 800 Nominees)
- Building and Maintenance of Email Database (Across 800 Nominees)
- Funding of Postage Expense on Behalf of Issuer
- Bank/Broker Expense
- Maintenance of Records for 3 Years
- Large issuer street unit costs are being reduced each year when considering the impact of paper and postage savings. These savings will continue to grow.
- ASCS/Rhoda Anderson survey found that only 416 issuers provided Internet delivery to registered shareowners; conversely, through ADP 830 issuers provided Internet delivery during proxy season and was available to all 14,000 issuers.
- Savings from suppressions are projected to reach \$581 million by 2005 (using NIRI's average costs for printing and ADP's average postage rates).
- Suppressions benefit larger issuers the most.

**Conclusions and Recommendations**

- Cost incurred by issuers of maintaining registered shareowners far exceeds that of street shareowners.
- Fees for registered processing are as much as 400% higher than the beneficial side considering size of company.
- All issuers will continue to enjoy lower unit costs due to increased suppressions.
- Institutions will not support any reduction/deterioration in service levels and capabilities from what exists today.
- Accuracy and reliability levels will continue at near flawless levels.
- Each \$.05 reduction in unit fees equals \$12.4 million. Each 5% increase in suppressions is equal to \$20 million to \$70 million (variation caused by largest issuer average printing costs versus NIRI average costs).

The Committee acknowledged the significant infrastructure costs (much higher than registered) required to service the beneficial in street proxies. It also acknowledged the extraordinary reliability and accuracy provided by ADP in servicing this market.

After evaluating the reduction of the costs and innovation in the process through the use of technology, the Committee agreed that the following changes in fees are fair and reasonable.

	<u>Current</u>	<u>Proposed</u>
Unit Fee	\$0.50	\$0.40
Nominee Fee	\$20.00	\$20.00
Nominee Unit Fee	--	\$0.10* / \$0.05 **
Suppression Fee	\$0.50	\$0.50* / \$0.25 **

\* Under 200k Positions      \*\* Over 200k Positions

The Committee believes that the lowering of the unit fees and suppression fees for the large issuers (at least 200,000 nominee accounts) further tiers the fees. An additional \$11 million or 14.7% of fee savings will be realized by large issuers in the first year. These fees reflect the economies of scale of approximately 200 of the largest corporations offset by peak season benefits and institutional requirements necessary primarily to service the large issuers. As reported by ADP, costs to provide services to institutions represent approximately 34% of total costs while revenue from institutional accounts are less than 8%. In addition, peak season requirements equal approximately 20.0% of total costs, which is primarily allocable to the largest issuers.

Other fee structures reviewed by the committee would cause significant controversy without improving the current cost and reliability benefits.

The Committee favors permanent approval of the proposed proxy fees based on the conclusions reached from the significant review process that had been undertaken.

### Longer Term Focus of the Committee

The longer term focus of the Committee might be to further address the design and governance of the proxy system itself, including ways of maintaining the efficiencies and integrity of a singular utility which allows for the effective participation and influence of all interested parties, particularly issuers, broker and banks, institutional and retail shareowners and regulators in the on-going oversight of the process.

### Initial Meeting March 29, 2001

Those present were:

#### PVRC Members:

-Rhoda Anderson  
(Rhoda Anderson Associates)  
-Brian Borders  
(APTC)  
-Rich Daly (ADP ICS)  
-Janice Hester-Amy  
(CalSTRS) by phone  
-Don Kittell (SIA)  
-Steve Norman (ASCS)

#### SEC Staff:

-Belinda Blaine  
(Market Regulation)  
-Sharon Lawson  
(Market Regulation)  
-David Martin (Corporation Finance)  
-Elizabeth Murphy  
(Corporation Finance)  
-Kelly Riley (Market Regulation)

#### Other Participants:

-Richard Koppes  
(Facilitator of Committee)  
-Maryellen Andersen  
(ADP ICS)  
-David Smith (ASCS)

The Committee held its first meeting with the Securities and Exchange Commission staff from the Divisions of Corporation Finance and Market Regulation. David Martin, Director of the Division of Corporation Finance, said that possibly the Committee would provide valuable information for the commission to consider as it reviews rule proposals regarding proxy fees. Belinda Blaine of the Division of Market Regulation said that the standards for the filing should include equitable allocation, reasonableness and fairness. She said that external information and evaluations that the Committee could make available to the staff would help with analysis. (The Commission staff provide summary background information regarding all the comment letters on fee issues to the Committee).

It was decided that deregulation would be considered as an item for review during "phase two" of the Committee after the Committee's first priorities were resolved. The longer term focus of the Committee would be to further address the design and governance of the proxy system itself, including ways of maintaining the efficiencies and integrity of a single utility while allowing for the effective participation and influences of all interested parties, particularly issuers, brokers, banks and institutional and retail shareowners and regulators in the on-going oversight of the process.

Steve Norman was elected Chairman of the Committee, and Rich Koppes was named Secretary of the Committee.

During the eight ensuing meetings, the Committee focused on:

- Reviewing the proxy process and how well the system is meeting the needs for all constituencies;
- Addressing the appropriateness of reasonableness and fairness of fees under the present system; and
- Making recommendations regarding the pilot project.

**Summaries of the Meetings are Presented Below**

**May 15, 2001**

Those present were:

Committee Members

- Rhoda Anderson (Rhoda Anderson Associates)
- Ken Bertsch (TIAA-CREF)
- Brian Borders (Representing APTC)
- Jim Buck (NYSE)
- Rich Daly (ADP ICS)
- Gordon Garney (CII)
- Don Kittell (SLA) by phone
- Steve Norman (ASCS)

Other Participants:

- Richard Koppes (Secretary to Committee)
- Maryellen Andersen (ADP ICS)
- Kelly Riley (SEC, Market Regulation)
- David Smith (ASCS)
- Shirley Weiss (NASD)
- John Yetter (NASDAQ)

The Committee reviewed and discussed the following issues:

- The Committee's By Laws (attachment 1)
- The background of rules relating to proxy distribution and reimbursement starting in 1927 to the present (attachment 2).

June 13, 2001

Those present were:

Committee Members

- Rhoda Anderson (Rhoda Anderson Associates)
- Ken Bertsch (TIAA-CREF)
- Brian Borders (APTC)
- Jim Buck (NYSE)
- Rich Daly (ADP ICS)
- Gordon Garney (CII) by phone
- Don Kittell (SIA) by phone
- Steve Norman (ASCS)

Other Participants:

- Richard Koppes (Secretary to Committee)
- Maryellen Andersen (ADP ICS)
- Marty Dunn (SEC Corporation Finance) by phone
- Kelly Riley (SEC, Market Regulation) by phone
- David Smith (ASCS)
- Shirley Weiss (NASD)
- John Yetter (NASDAQ)

The Committee reviewed and discussed the following issues:

- ♦ ADP's development and implementation of technologies for electronic proxy service, touch tone telephone voting, electronic vote reporting, electronic distribution, householding, nominee coordination, account suppression, lower issuer costs and improved communication (attachment 3).
  1. The implementation of the technologies (telephone voting, ProxyEdge, Internet voting) has lead to great quorum results.
    - Shares returned electronically
      - 1996 – 48.5%
      - 2001 – 70.9%
  2. Client survey results of all constituencies—issuers, institutional, broker – showed a 94.9% rating of good, very good or excellent in 2000 and 96% in 2001.
    - David Smith of ASCS said that his constituency agrees that ADP provides accuracy and good service.
  3. Issuer costs are reduced because of suppressions and printing, paper and postage savings.
    - Through account suppression and Internet voting, the percentage of accounts grew from 7.87% in 1998 to 16.1% in 2001.
  4. Because of ADP's technology, telephone voting, Internet voting and voting through ProxyEdge is available for every company. There is a savings to the issuer if the shareholder votes electronically. The costs are the following:
    - .03.....Internet
    - .06.....ProxyEdge
    - .18.....Telephone
    - .31.....Paper
  5. ADP maintains a preference database of shareholders who request electronic delivery of investor communications. Issuers save money because of Internet distribution.

- In 2000 there were 900,000 enrollees; now there are 2 million.
  - There can be a hyperlink to issuer and broker websites to allow enrollment for e-delivery.
  - During 2001 proxy season, 826 companies had their materials available for e-delivery.
6. To save more money, issuers need to be strongly encouraged to have their materials available on the Internet.
7. Issuers will also save because of the implementation of the new householding rules.
- ADP has developed a process to gather consents for householding at a cost of \$2 million in pipeline development and \$3 million in enhancements to mailing equipment in addition to increased operating costs and computer costs.
  - The savings to issuers as a result of nominee coordination remains constant at \$140 million.
  - The savings through account suppression will continue to increase from \$126.7 million in FY 2000 to over \$234.7 million in FY 2001. ADP projects a \$573.3 savings in FY 2005.
- A document prepared by Rhoda Anderson regarding all broker/vendor rates for 1995 (attachment 4);
    - Agreement by all was that rates were much higher in 1995.

July 10, 2001

Those present were:

Committee Members

- Rhoda Anderson (Rhoda Anderson Associates)
- Brian Borders (APTC)
- Jim Buck (NYSE)
- Rich Daly (ADP ICS)
- Gordon Garney (CII)
- Don Kittell (SIA)
- Steve Norman (ASCS)
- Shirley Weiss (NASD) by phone

Other Participants:

- Richard Koppes (Secretary to Committee)
- Maryellen Andersen (ADP ICS)
- Kathleen Clark (Seward & Kissel for Alamo Direct)
- Madeline Dolan (CTA & IBM)
- Claudia Holcombe (CTA & ATT)
- Elizabeth Murphy (SEC Corporation Finance)
- Kelly Riley (SEC, Market Regulation)
- David Smith (ASCS)
- Peter Suhr (Alamo Direct)
- Stephen Walsh (NYSE)
- John Yetter (NASDAQ)

The Committee reviewed and discussed the following issues:

- An oral report on behalf of the CTA given by Claudia Holcomb of ATT regarding the following fee issues:
  - ADP's proxy services were of high quality;
  - ADP's fees were higher than the expense levels that in-house agents incurred in servicing registered holders;

- Based on an informal survey of 12 companies, the \$.50 processing fee was 30% to 50% higher than the registered fee.
- The \$20 nominee fee represented a disproportionate burden to small issuers.
- ADP passed only half of the bulk postage savings to issuers.
- Rich Daly from ADP stated that the average issuer ADP processed had only 7,000 street name accounts, considerably smaller than the companies in CTA's survey.
- He said that the existing fees were appropriate to cover the higher unit costs of such small jobs and to provide the means to invest further in technology.
- He enumerated the numerous services that ADP provided to street name holders that were not provided by transfer agents or in-house agents to registered holders (contained in attachment 5 - "Beneficial vs. Registered Analysis," July 31, 2001, pp. 4-8).
- ♦ A report by Peter Suhr of Alamo Direct, a firm that distributes proxy material to the mutual fund industry, stated that if his firm had access to the customer data of brokerage firms, his firm could **profitably distribute and tabulate proxy material** to street name shareholders for fees less than charged by ADP (attachment 6).
  - He stated that advances in computing technology made the cost of transferring data files significantly less than they were in the 1980's when the NOBO fees were established.
  - He stated that ADP charged certain issuers \$.32 for processing their registered work and the street side work should be no more expensive.
  - He said that firms were prevented from bidding on the street side business because the brokers were contractually bound to ADP.
  - Rich Daly said that the fees had to be sufficiently high to encourage processors to build sufficient capacity to deliver high volumes in peak periods and in accordance with SEC turnaround time mandates.
  - He also stated that based on prior dialogues with the SEC to adopt a fee schedule that required smaller firms to pay higher fees was politically unacceptable.
  - The service provided to street name holders versus registered holders is in "Beneficial vs. Registered Analysis," July 31, 2001, pp. 4-8 (attachment 5).

### July 31, 2001

Those present were:

#### Committee Members

- Rhoda Anderson (Rhoda Anderson Associates)
- Ken Bertsch (TIAA-CREF)
- Brian Borders (APTC)
- Jim Buck (NYSE)
- Rich Daly (ADP ICS)
- Gordon Garney (CII)
- Don Kittell (SIA)
- Steve Norman (ASCS)
- Shirley Weiss (NASD)

#### Other Participants:

- Richard Koppes (Secretary to Committee)
- Maryellen Andersen (ADP ICS)
- Liz Fender (NASDAQ) by phone
- Kelly Riley (SEC Market Regulation)
- David Smith (ASCS)
- John Yetter (NASDAQ) by phone

The Committee reviewed and discussed the following issues:

- ♦ A report on ADP's service to street holders entitled "Beneficial vs. Registered Analysis," July 31, 2001 (attachment 5);
  - The services required for beneficial processing are different in that they are more extensive and complex than the services provided for registered processing.
- ♦ The following services, although not required, have been provided for beneficial processing under the existing fee structure. Registered processing, while not requiring all of these services, charges additional fees for services such as telephone voting, internet voting, electronic distribution, householding, etc:
  - Fiscal Year End Profile Distribution to 12,000+ Issuers
  - Search Card Notification Processing
  - Ad Hoc Request for Material Estimates
  - Consolidated Search and Proxy Record Date Shareowner Positions Material Requirements Request to Nominee/Clients (across 800 nominees)
  - **Provide Nominee/Client with Report Confirming Total Positions and Shares Transmitted for Each CUSIP (across 800 nominees)**
  - Rule All Proposals (Based on NYSE)
  - Assignment of Proposal Code
  - Addition and/or Deletion of Record Date Beneficial Owner Name and Address Information
  - Vote Reporting by Nominees
    - o 15/10 Days; 9 Days Before Meeting Through Day of Meeting
    - o 2 Vote Reports Day Before Meeting
    - o Day of Meeting Votes
  - Electronic Voting Transmission to Solicitor and Transfer Agent
  - Vote Inquiries (Banks, Brokers and Institutions Not Voted)
  - Consolidated Voting Across Nominees
  - Confidentiality of Client Beneficial Shareowner Data
  - Exception Processing
  - Co-Trustee Processing
  - Internet and Telephone Votes for 12,000+ Issuers
  - Internet distribution for 12,000+ Issuers
  - DTC Over Vote Monitoring
  - Vote Confirmation Reporting
  - Advanced Record Date Notification
  - Meetings with Dissenters Rights Reporting
  - Non-Mailed Accounts as of First Issued Vote Reporting
  - Closed Meeting Report
  - Bank, Broker Confirmation of Mailing
  - Bank, Broker Vote Confirmation Summary
  - Disaster Recovery
  - Interactive Voice Response System
  - Affidavit of Compliance (Self-Reporting Mechanism Between ADP and its Clients as Required by NYSE)
  - Annual Procedural Audit Report as Required by NYSE
  - Weekly Measurement Criteria
  - Vote Statistical Audit
  - ISO 9002 Certification

- Consolidated Invoicing (Across 800 Nominees)
- Building and Maintenance of Householding Database (Across 800 Nominees)
- Building and Maintenance of Email Database (Across 800 Nominees)
- Funding of Postage Expense on Behalf of Issuer
- Bank/Broker Expense
- Maintenance of Records for 3 Years
- ♦ Fees for registered processing are as much as 400% higher than the beneficial side considering size of company.
- ♦ Don Kittell of the SIA suggested that much of the large companies' dissatisfaction with the current fee structure was attributable to the issue of unitary pricing which prevented large companies from realizing economics of scale.
- ♦ David Smith, speaker for large companies, and Brian Borders, speaker for small companies, were asked to explore ways of potential compromise in this area.
- ♦ **An alternative proposal presented by David Smith on behalf of the ASCS which would allow issuers to have a greater hand in controlling/determining costs in the proxy process (attachment 7).**
  - Brokers would chose between mailing and tabulating proxy materials at their expense versus delegating those tasks back to the issuers at issuers' expense.
  - Rich Daly said the proposal represented a form of deregulation, which ADP supports, but needs to address many requirements of the process not considered by the proposal to make it work.
  - Don Kittell said he saw a fair amount of problems in implementation.
  - David Smith said that the proposal goes to who pays the costs and issue of control and decision-making.

### August 29, 2001

Those present were:

#### Committee Members

- Rhoda Anderson (Rhoda Anderson Associates)
- Ken Bertsch (TIAA-CREF)
- Brian Borders (APTC)
- Jim Buck (NYSE)
- Rich Daly (ADP ICS)
- Gordon Garney (CII)
- Janice Hester-Amey (CalSTRS) by phone
- Don Kittell (SIA)
- Steve Norman (ASCS)
- Shirley Weiss (NASD)

#### Other Participants:

- Richard Koppes (Secretary to Committee)
- Maryellen Andersen (ADP ICS)
- Amy Goodman (Gibson Dunn)
- Claudia Holcombe (AT&T)
- Rachel Kosmal (Intel) by phone
- Sharon Lawson (SEC Market Regulation)
- Kevin McKechnie (ABA- for Sally Miller)
- Elizabeth Murphy (SEC Corporation Finance)
- Kelly Riley (SEC Market Regulation)
- David Smith (ASCS)
- Peter Suhr (Alamo Direct)
- Stephen Walsh (NYSE)

The Committee reviewed and discussed the following issues:

- ♦ Don Kittell detailed reasons that he was against the ASCS proposal and presented the SIA response. (Attachment 8);

- He described how the U.S. proxy system evolved from hundreds of in-house proxy departments, of greatly differing size and efficiency, into a single utility operated by ADP.
- He stated that just as large and small issuers represented different economies of scale to the proxy processor, the cost structures and processing efficiencies of the various firms also varied greatly.
- Smaller firms lost money on the NYSE prescribed fees while the few largest national firms broke even or make money.
- He analogized the benefits of a single proxy utility to the widely acknowledged processing efficiencies of the nation's centralized share depository and record keeper, Depository Trust Company.
- He emphasized the concern for confidentiality by broker dealers is a very real issue for them.
- He suggested that competition might be introduced into the proxy system, while maintaining the advantages of a single utility, if the Committee were to invite potential vendors to submit bids to operate the utility, for a period of 5 to 7 years, with appropriate industry oversight.
- The Committee agreed that the concept of a single proxy utility, with diverse industry oversight, would be further considered.
- ♦ Institutions voice opposition to the ASCS proposal
  - Ken Bertsch of TIAA-CREF and Gordon Garney of CII stated that their organizations as well as a number of public pension funds and Taft-Hartley funds were opposed to the ASCS Proposal.
  - Gordon Garney stated that ADP is viewed as impartial but the new proposal could cause a concern of favoritism on behalf of corporate management.
  - Gordon Garney said that delegating the street-side proxy process back to issuers would potentially fragment the proxy process and by placing it more within the control of issuers, could tilt the voting process to favor corporate management.
  - Gordon Garney expressed concern regarding the confidentiality of the proxy voting system in relation to the ASCS proposal.
  - Ken Bertsch stated that while perceived as expensive, the present proxy process, administered by ADP, is viewed by the institutional community as impartial, reliable and efficiently administered.
  - Steve Norman said that the Committee did not want to weaken or politicize the "finest proxy system in the world."
  - Steve Norman continued that integrity, efficiency, fairness, audit ability and reliability of the U.S. proxy system must be maintained.
- ♦ Rachel Kosmal of the Intel Corporation presented an analysis of Intel's 2001 proxy expense (attachment 9);
  - She stated that ADP handled the distribution and tabulation of both street and registered sides with the overall variable costs for the street accounts \$1.85 versus \$1.72 for registered side.
  - She said that the one size fits all \$.50 street side processing fee and \$.50 elimination fee might be inappropriate for large issuers.
- ♦ David Smith and Brian Borders presented a preliminary tiered pricing schedule (attachment 10);

- Using ADP's proxy fee revenues, the schedule undertook to preserve the same level of revenue while allocating the issuer fees in a manner that reflected ADP's actual unit costs for servicing small, medium and large issuers.
- The proposal warranted additional analysis and discussion.
- A paper entitled "Rationale of Tiered Rates" which included an attachment regarding American Express's average unit cost for beneficial proxy (1998—\$1.23 down to \$.78 in 2001) was discussed by Mr. Daly. Also the required criteria of street proxy process were presented (attachments 11 a, b, and c).

**October 17, 2001**

Those present were:

Committee Members

- Rhoda Anderson (Rhoda Anderson Associates)
- Ken Bertsch (TIAA-CREF)
- Brian Borders (APTC)
- Jim Buck (NYSE)
- Rich Daly (ADP ICS)
- Gordon Garney (CII)
- Janice Hester-Amey (CalSTRS) by phone
- Don Kittell (SIA)
- Steve Norman (ASCS)
- Shirley Weiss (NASD) by phone

Other Participants:

- Richard Koppes (Secretary to Committee)
- Maryellen Andersen (ADP ICS)
- Paul Conn (Computershare Limited)
- Michael Foley (EquiServe)
- Claudia Holcombe (IR & AT&T)
- Rachel Kosmal (Intel)
- Kevin McKechnie (ABA – for Sally Miller) by phone
- Elizabeth Murphy (SEC Corporation Finance)
- David Smith (ASCS)
- Peter Suhr (Alamo Direct)
- Stephen Walsh (NYSE)
- John Yetter (NASDAQ) by phone

The Committee reviewed and discussed the following issues:

- An oral presentation of the transfer agent role in the proxy process by Michael Foley of EquiServe
- An overview by Paul Conn of Computershare Limited, a global company that has recently entered the U.S. market.
  - He believes that issuers should be permitted to choose vendor for street and registered side.
  - He admitted that if multiple vendors provided services, institutional investors might have more than one platform that they would have to log on to in order to vote.
  - The institutional investors voiced that they had efficiency concerns regarding multiple platforms.
  - The institutional investors said that there is no comparison of the U.S. proxy voting to global proxy. U.S. system is efficient, non-U.S. is not.
- ASCS Process Survey on Technology for 2001 by Rhoda Anderson (attachment 12).
  - Indicated that issuers and transfer agents were not taking advantage of opportunities to reduce paper and expenses (E-delivery)
- Tiered Pricing Review (attachment 13)
  - Large issuers felt it did not reflect economics of scale
  - The Committee did not wish to pursue a new fee structure in light of the time and effort that would be required to get approval.

November 1, 2001

Those present were:

Committee Members

-Rhoda Anderson (Rhoda Anderson Associates)  
-Ken Bertsch (TIAA-CREF)  
-Brian Borders (APTC)  
-Jim Buck (NYSE)  
-Rich Daly (ADP ICS)  
-Gordon Garney (CII) by phone  
-Don Kittell (SIA)  
-Steve Norman (ASCS)  
-Shirley Weiss (NASD) by phone

Other Participants:

-Maryellen Andersen (ADP ICS)  
-Paul Conn (Computershare Limited)  
-Rachel Kosmal (Intel)  
-Sapna Patel (SEC Market Regulation)  
-Bob Schifellite (ADP)  
-David Smith (ASCS)  
-Peter Suhr (Alamo Direct)  
-Stephen Walsh (NYSE)

After a tour of ADP's facilities, the Committee reviewed and discussed the following issues:

- ♦ ADP ICS Technology Overview (attachment 14)
  - Extensive programming requirements to fully process over 90% of nation's proxies.
  - Long Island facility supported by \$300 million data center in New Jersey.
  - Data center backed up by off-site processing capability at an IBM site.
  - Redundant data files stored in an off-site storage facility.
  - ADP's processing efficiency is rated Best in Class for its industry group.
  - ADP's efforts to lower costs to issuers through householding and E-delivery of materials, ProxyEdge and through exceptional processing.
- ADP Internal and External Auditing (attachment 15)
  - ADP's Vote Audit and Control Department was formed in 1994 to oversee tabulation of shareholder votes.
  - Discussion of institutional investor driven mandates regarding vote audit, verification, efficiencies and integrity.
- ♦ Current Fee Structure
  - Rich Daly stated that he believed the current fee schedule continued to be appropriate and that issuers should focus on the great progress made in reducing paper and postage costs through ADP's advances in implementing householding, suppressing mailing of proxy materials and through electronic voting and delivery.
  - Large issuers still requested a revision to current fee schedule to reflect the economics of scale that their high volume runs present to ADP.

November 13, 2001

Those present were:

Committee Members

- Rhoda Anderson (Rhoda Anderson Associates)
- Ken Bertsch (TIAA-CREF)
- Brian Borders (APTC)
- Rich Daly (ADP ICS)
- Gordon Garney (CII) by phone
- Don Kittell (SLA)
- Steve Norman (ASCS)
- Shirley Weiss (NASD) by phone

Other Participants:

- Richard Koppes (Secretary to Committee)
- Maryellen Andersen (ADP ICS)
- Sharon Lawson (SEC Market Regulation) by phone
- Elizabeth Murphy (SEC Corporation Finance) by phone
- Sapna Patel (SEC Market Regulation) by phone
- David Smith (ASCS)
- Stephen Walsh (NYSE)
- John Yetter (NASDAQ) by phone

The Committee reviewed and discussed the following issues:

- **SEC Comments**
  - Betsy Murphy said that David Martin was leaving the SEC and his successor would assume duties in January 2002.
  - She said that, on behalf of the SEC, they were hopeful that this Committee or a successor Committee would continue to be a resource with reviews of the proxy system.
- ADP's document regarding the cost of delivering proxy services to the various size categories of issuers bearing in mind the economies of scale of, and the higher levels of services required by, larger issuers with large institutional holders (attachment 16).
  - The information on pages 4-6 (attachment 16) implied that 82 of the largest companies paid some \$5 million in excess in fees and that companies under 10,000 positions benefited from this \$5 million
  - Rich Daly stated that the total cost not fees is the appropriate concern of the issuers and unit costs continue to be reduced for issuers, particularly larger issuers.
  - He again committed to continuing to reduce the costs of the process by several hundred million dollars over the next two to three years.
  - Don Kittell suggested that a group meet with Merrill Lynch to discuss their cost sharing.
- ADP's documents showing:
  - (a) total cost and savings in the voting process (attachment 17)
  - (b) financial impact to certain large companies regarding potential revision to wrap and suppression fees (attachment 18).
    - o Gordon Garney stated that the CII could not vote to support this proposal since it only favored these few large issuers and penalized most of the other issuers by raising the fees.

November 28, 2001

Those present were:

Committee Members

- Ken Bertsch (TIAA-CREF)
- Brian Borders (APTC) by phone
- Jim Buck (NYSE)
- Rich Daly (ADP ICS)
- Gordon Garney (CII) by phone
- Don Kittell (SIA)
- Steve Norman (ASCS)
- Shirley Weiss (NASD) by phone

Other Participants:

- Richard Koppes (Secretary to Committee) by phone
- Maryellen Andersen (ADP ICS)
- Sharon Lawson (SEC Market Regulation) by phone
- Elizabeth Murphy (SEC Corporation Finance) by phone
- Sapna Patel (SEC Market Regulation) by phone
- David Smith (ASCS)
- Stephen Walsh (NYSE)

The Committee reviewed and discussed the following issues:

- **Proposal on fees (attachment 19)**
  - Approximately 200 of the largest US issuers would see a reduction in fees because of their economics of scale (200,000 street name shareholders).
  - Gordon Garney endorsed the proposal because it reduces fees to larger issuers without raising fees for others.
  - Brian Borders supported the proposal and indicated that it was a good result for all.
  - Ken Bertsch endorsed the proposal and noted that eliminating the “pilot” does not tie anyone’s hands for the future.
  - All members voted in favor of proposal with Shirley Weiss abstaining.
  - The Committee believes that the proposed fees appear reasonable when considering the service levels required and the overall costs of suppression, that is, the elimination of duplicate mailings.
  - The Committee concurs in the request of institutional investors that the current level of service be maintained and that continued technological investments are necessary to ensure the accuracy and reliability of the proxy system and to obtain further cost savings.
  - The Committee requests that the rules be finally adopted and that the period of the pilot should end.

Aug. 27, 2001

SLA RESPONSE TO ASCS PROXY PROPOSAL AUGUST 10, 2001

- I. SLA respects the ASCS objectives underlying the proposal:
- Confidence that the cost reimbursement received by broker-dealers and their for-profit agent (ADP) is fair and reasonable.
  - Greater issuer control of the street name shareholder mailing and vote tabulation process for which they pay.
  - Pricing of this process determined by competition among providers versus SRO/SEC rate setting.
- II. The ASCS proposal provides that:
- (1) Broker-dealers to choose:
    - (A) to conduct the process at their own expense, or
    - (B) to delegate the process to the issuers and provide the necessary shareholder information to the issuers (or issuer's agent) to carry out the process.
  - (2) Regardless of the choice of (A) or (B) above, broker dealers retain the responsibility for voting street name shareholder.

SLA's comments will address the ASCS proposal as it has been presented; however, we need to know a great deal more about how the proposal would work in order to respond completely.

For example, we would need to know the answers to the following questions:

- (1) If a broker-dealer chose to delegate the process to the issuer, would every issuer be willing to accept? Or would only some issuers agree to accept?
- (2) How many different issuers or issuers' agents would broker-dealers have to transmit files to? Would the data transmission be in standard format and follow standard procedures or would every issuer or issuer's agent have different file formats and procedures?
- (3) Once the file transmission formats and procedures are established, would issuers change them from issuer to issuer, from agent to agent, from year to year?

- (4) How would multiple issuers and/or agents cope with the exception processing for the individual broker-dealers that is currently centralized under ADP?
- (5) How would broker-dealers be assured of the confidentiality of their customer information and how would they (and their street name shareholder clients) be assured that the privacy policies of broker-dealers would be enforced?
- (6) Would the free-market competition for pricing the process be managed for all issuers as a group and retain the concept of unitary pricing that favors small issuers? Or would free-market competition be conducted on an issuer-by-issuer basis in which large issuers would negotiate lower fees and small issuers would be forced to pay higher fees?
- (7) How does the proposal deal with objecting street name shareholders? Would the SEC's OBO-NOBO rules need to be rewritten?
- (8) Does the proposal envision reimbursing broker-dealers for the costs they incur in transmitting street name shareholder information to the issuers or issuers' agents? If so, how would this reimbursement be determined – on a broker-dealer by broker-dealer basis or by an industry-wide rate schedule? Would this schedule take into account the different costs incurred by large versus small broker-dealers and large versus small issuers?
- (9) How does the proposal envision broker-dealers retaining the responsibility for the street name vote when the broker-dealer no longer is responsible for mailing and tabulating?
- (10) Would issuers build the necessary programming requirements to consolidate positions for financial advisors, handle co-trustee voting, ERISA accounts, and other related exception processing requirements?
- (11) Would established electronic voting mechanisms for institutions and funds (i.e. Proxy Edge) cease as a tool for these entities?
- (12) If NOBO's and OBO's were split, how would DTC's reconciliations be handled?
- (13) Would issuers accommodate record date corrections and adjustments?
- (14) Does the proposal address the need for answering broker client inquiries?
- (15) Would vote confirmations be available to institutions that request them?
- (16) What would happen if meetings become contested? Who mails and tabulates opposition mailings?

- (17) Does the proposal contemplate issuers maintaining individual databases for householding and internet preferences?
- (18) Will confirmations be provided to brokers regarding full and complete receipt of files transmitted?
- (19) Does the proposal consider how omnibus reporting would be handled?

III. While SIA does not have ASCS comments regarding the above questions at this time, we do have the following comments on the concept:

- (1) SIA believes that a large part of the issuers' frustration with the current process arises from its unitary pricing structure.

In brief, the unitary pricing structure:

- penalizes large issuers for the benefit of small issuers. When large issuers analyze their street name costs versus comparable (i.e., registered) mailing/tabulating jobs, the street name costs appear high. This is attributable to two factors: First, the decision makers who devised the unitary pricing schedule consciously decided to strike a balance between large and small issuers. Second, street name processing is more complex than registered processing because of the institutional vote and other factors.

- favors large broker-dealers at the expense of small broker-dealers. The reason small broker-dealers readily outsourced their proxy mailing and voting activities to ADP was that they were losing money with the unitary pricing structure. The reason large broker-dealers were able to continue as independents longer was because they were favored by unitary pricing. The reason large broker-dealers were able to negotiate more favorable terms with ADP was because of their volumes and the value of their volumes brought about by unitary pricing. The decision to outsource did not impact the fees paid by issuers, but did create greater savings for issuers through economies of scale and greater functionality for internet delivery and electronic voting. These broker dealers, individually, did not have an incentive to invest in the technology required to achieve these savings.

- ASCS could obtain the same benefit of free market pricing that large issuers envision by simply replacing the unitary fee structure with one that more accurately reflects the costs of high volume versus low volume jobs. But ASCS (as well as the SRO's and SEC) have been reluctant to face the consequences of such a tiered pricing structure on small issuers.

- SIA has asked ADP to develop a tiered pricing proposal for the August 29 meeting, solely to illustrate this point.

- (2) SIA believes that the proxy mailing and tabulating activity is most efficient when carried out by one processor.

If that is the case, competition could be achieved by putting the job out for competitive bid at long (perhaps 7-10 a year) intervals to allow bidders to justify the capital investment required to do the work.

SIA does not believe that competition of job-by-job or issuer-by-issuer bids will result in lower costs for all issuers. Even large issuers, who might be expected to get lower prices than currently, will have to deal with reimbursement of broker-dealer transmission costs to multiple issuer agents. A fragmented system will cost more than a single process or system. A fragmented system will make it more difficult to achieve the voting returns that issuers want. A fragmented system will make it more difficult to provide service to broker-dealer clients and to shareholders.

In addition, elimination of materials (currently reported by ADP to be 16% of positions) would not continue unless each issuer/vendor programmed for each broker's unique requirements and account syntax. ADP's ProxyEdge service would no longer be available for institutions representing close to 70% of shares outstanding.

- (3) SIA broker-dealers who have commented on the ASCS proposal are unanimous in
- (A) refusing to pay the costs for proxy mailing and tabulation that are an issuer responsibility. (Therefore, they would choose to delegate to issuers.)
  - (B) refusing to accept responsibility for the street name vote if issuers have been delegated the responsibility for mailing and tabulating.
  - (C) requiring meaningful assurances from issuers that the confidentiality and privacy of street name shareholder information is maintained.
  - (D) Requiring meaningful assurances from issuers that small account holders will receive the same service as large shareholders in timely mailings of proxy materials, and
  - (E) Requiring reimbursement from issuers for the costs of conversion and transmitting street name shareholder information to issuers or their agents.

#### IV. Conclusions

SLA believes that the current proxy process will be difficult to improve upon (although we are willing to explore alternative structures).

We believe that issuers can achieve significantly greater cost savings by moving from paper to electronic and telephonic processing. We think the return from such an effort is greater than that which can be achieved by reducing the current fee schedule.

At the same time, we are troubled by the issuers' continuing frustrations with governance, with ADP's profitability and with large broker-dealer cost reimbursement – especially in light of the significant improvements in the process and reductions in expenses over the last few years.

SLA has tried to address each of these issues and we believe that ADP has also been forthcoming on each issue.

##### Governance

Issuers can and do influence the behavior of broker-dealers, of ADP and of the SEC. The more active and involved issuers become in the process, the better the results. Examples of areas where issuers can improve the process include more efficient householding rules and procedures, encouragement of shareholder use of Internet and telephonic voting and institutional use of Proxy Edge. ADP has offered to move its issuer steering committee to an issuer group (i.e., ASCS/APTC) to eliminate any perception of bias.

##### ADP Profitability

ADP went to great lengths and considerable expense to create and present its income statements for proxy services. While there was a contentious debate about how to interpret these statements (primarily with the SEC and NYSE), we do not believe that the issuers ever commented on them. Such a comment, perhaps using an independent expert, might serve the issuers well.

##### Broker-Dealer Cost Reimbursement

Issuers may be of the opinion that if the broker-dealer has outsourced to ADP, it has no on-going expense – which is not the case. Broker-dealers maintain proxy infrastructures to coordinate and manage the interface between the broker-dealer and ADP, as well as to perform functions that are not handled by ADP. Additionally, firm wide systems that support the proxy process are maintained and enhanced as regulations and/or processes evolve.

From a shareowner annual expense perspective, it is without question that registered share ownership is far more expensive to issuers than Street

ownership. Perhaps a study of registered vs beneficial ownership expense might be constructive to alleviate some of the issuers' concerns.

Cost reimbursement is also a function of outsourcing agreements between broker-dealers and ADP. The broker-dealers maintain that their cost reimbursements are in accordance with the approved NYSE fee schedules and that their outsourcing contracts with ADP are arms-length negotiated arrangements that benefit issuers, rather than harm them. Indeed, an analysis of these agreements and their impacts on issuers would result in issuers approving the agreements out of self-interest.

### Unbundling

ADP's response to issuer requests to reduce the current fee schedule has been to suggest unbundling of services. It may be useful to explore in detail what this arrangement would be like.

Mr. Jonathan G. Katz, SEC  
June 24, 2004  
Page 2

The system has been under continuous review by its issuers and its regulators since 1996. Most recently, in 2001, representatives of the participants in the system formed the Proxy Voting Review Committee (PVRC) to perform an extensive review of the process. The PVRC was formed with the encouragement of the Commission's director of the Division of Corporation Finance and was chaired by the corporate secretary of the American Express Company and the former chairman of the American Society of Corporate Secretaries. The PVRC included representatives from the American Society of Corporate Secretaries (ASCS), the Association of Publicly Traded Companies (APTC), the Council for Institutional Investors (CII), the New York Stock Exchange (NYSE), the National Association of Securities Dealers (NASD), Teachers Insurance and Annuity Association-College Retirement Equities Fund (TIAA-CREF) and the Securities Industry Association (SIA). Representatives of the SEC's Corporate Finance and Market Regulation staff participated as observers. The PVRC met ten times over an eight-month period and issued its findings and recommendations early in 2002, a copy of which is attached as **Exhibit I**.

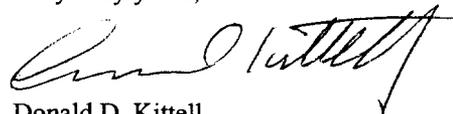
Although the principle recommendations of the PVRC dealt with fees paid by issuers, it is relevant to the Business Roundtable's petition that the PVRC also discussed "all aspects of the process to ensure fairness and accountability to all constituencies involved," and included a proposal put forward by the ASCS that is similar to the BRT's petition. The ASCS decided not to pursue its proposal after hearing the views of broker-dealers (SIA) and institutional investors (TIAA-CREF and CII). In addition, the ASCS decided not to proceed to develop answers to a number of questions as to how its proposal would actually work in practice. Those questions are described in SIA's response to the ASCS proposal, attached as **Exhibit II**.

Rather than petitioning the SEC to consider re-engineering the entire process of shareholder communications, SIA believes that it makes far more sense for issuers to work with each of the participants in the system to address the specific concerns that they have. We have an excellent system in place, one that is the result of years of development and investment, and one that successfully balances a complex set of interrelated requirements.

There may be a better way to carry out this activity, and the Securities Industry Association is open to exploring new alternatives, but the standards of excellence that have already been set will be difficult to beat.

We look forward to working with issuers, the Commission and other interested parties to ensure that the shareholder communication process continues to operate efficiently and effectively. If you have any questions, or would like to discuss our views further, you may contact me at 212-618-0526.

Very truly yours,



Donald D. Kittell  
Executive Vice President

cc: Hon. William H. Donaldson, Chairman-U.S. Securities & Exchange Commission  
Hon. Paul S. Atkins, Commissioner  
Hon. Roel C. Campos, Commissioner  
Hon. Cynthia A. Glassman, Commissioner  
Hon. Harvey J. Goldschmid, Commissioner  
Giovanni P. Prezioso, General Counsel  
Alan L. Beller, Director-Division of Corporate Finance  
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