FINANCIAL SERVICES
FOR THE GREATER GOOD®

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November 8, 2010

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Concept Release on the U.S. Proxy System, File No. S7-14-10

Dear Ms. Murphy:

~~I am writing on behalf of Teachers Insurance and Annuity Association of America~~ ("TIAA") and College Retirement Equities Fund ("CREF") (collectively, "TIAA-CREF"). TIAA-CREF is a national financial services organization and the leading provider of retirement services in the academic, research, medical and cultural fields, with $434 billion in combined assets under management as of September 30, 2010. CREF, one of this country's largest institutional investors, holds shares in over 7,000 publicly traded companies. As fiduciaries charged with maximizing the collective value of over 3.7 million participants' retirement savings, we have been a leading advocate for more than 30 years on behalf of shareholder rights and good corporate governance.

We commend the Securities and Exchange Commission ("SEC" or "Commission") and its Staff for launching a comprehensive reassessment of the proxy voting system in this country through the publication of the Concept Release on the U.S. Proxy System ("Concept Release").[1] The Release reflects an extraordinary regulatory effort to re-examine all aspects of the current proxy process from the ground up, based on the SEC's explicit recognition of the numerous perceived deficiencies that now function to undermine investor and corporate confidence in the integrity of this process.

Although the Concept Release covers multiple subjects related to the proxy voting system, we have focused our comments to highlight some deficiencies regarding the accuracy and transparency of the system, the role of proxy advisory services and the need for enhanced education related to proxy voting. Our views on the U.S. proxy system are from our perspective

[1] SEC Rel. Nos. 34-62495; IA-3052; IC-29340 (July 14, 2010).

both as an active and engaged institutional investor and that of an issuer subject to the federal proxy rules.[2]

The Importance of Proxy Voting

Well-functioning capital markets require a transparent flow of information from public companies, including information necessary to investors' informed voting of corporate proxies. Proxy voting is one of the primary methods for exercising our shareholder rights and constructively influencing the governance - and therefore, we believe, the performance - of our portfolio companies. TIAA-CREF commits substantial resources to make informed voting decisions in furtherance of our core mission of maximizing the value of assets managed. Our detailed voting policies are implemented on a case-by-case (and company-by-company) basis. In implementing these policies, we rely on our professional judgment informed by proprietary research, research reports form multiple third-party providers and staff responsible for investment decisions regarding individual company stocks. Annual disclosure of our proxy votes is available on our website, www.TIAA-CREF.org, as well as on the website of the SEC (http://www.sec.gov).

In addition to our role as an active and engaged shareholder, TIAA-CREF also sponsors a family of mutual funds which, along with CREF, are registered with the SEC under the Investment Company Act of 1940. From our perspective as an issuer subject to the federal proxy rules, we believe that the SEC, as well as companies, broker-dealers and bank intermediaries can do much more to promote more meaningful disclosure in proxy statements and reduce the complexity of the proxy delivery and voting mechanisms. All participants in the proxy process have an important stake in its transparent and efficient operation, and should be willing to expend the resources necessary to remove existing barriers to informed proxy.

Like the SEC, we believe that one of the fundamental purposes of the federal proxy rules is to assure that each shareholder has a meaningful opportunity to make informed voting decisions, regardless of whether that shareholder holds corporate stock directly or beneficially through a broker-dealer, bank or other institutional custodian. We have chosen to hold the shares of portfolio companies in the name of our custodial bank nominee not only because this form of ownership is more cost-effective and efficient, but also because we rely on the federal proxy rules to enfranchise us as beneficial owners and, further, to assure that our voting rights are protected to the same degree as those of record owners under applicable state corporate law. Nevertheless, we believe that the SEC rules underpinning the proxy voting system could operate more effectively to protect our valuable voting rights, for the reasons outlined below, and urge the SEC to pursue its efforts to reform the current system.

[2] CREF and the TIAA-CREF family of mutual funds are registered with the SEC under the Investment Company Act of 1940.

1. *The Current Proxy Voting System Lacks the Necessary Assurances of Accuracy and Transparency, and Must Be Reformed*

a. Vote Confirmations for Both Beneficial and Record Owners

At a time where the exercise of the corporate franchise has become more important than ever to shareholders and the companies in which they invest, we fully concur with the SEC's statement in the Concept Release that "both record owners and beneficial owners should be able to confirm that the votes they cast have been timely received and accurately recorded and included in the tabulation of votes, and issuers should be able to confirm that the votes they receive from securities intermediaries/proxy advisory firms/proxy service providers on behalf of beneficial owners properly reflect the votes of those beneficial owners."[3] Unfortunately, we do not believe that the current proxy process achieves this two-pronged objective.

From our perspective as a large institutional shareholder holding portfolio company stock through a bank custodian, it is vitally important that we be able to track the progress of our voting instructions. Specifically, once our voting instructions are sent to Broadridge Financial Services, Inc. ("Broadridge")[4] via our third-party intermediary, we generally are unable to obtain confirmation that these instructions have been received and accurately executed by the company's tabulator.

In addition to the lack of end-to-end vote confirmation, at times we have observed errors in the ballot and agenda information passed thorough by Broadridge. These errors can range from mistakes in agenda coding (whether the proposal is sponsored by management or a shareholder) to agenda items appearing in a different order then presented by the company in its proxy material. While these mistakes can appear trivial and easily remedied, even small errors such as these can cause votes to be incorrectly cast.

In light of our responsibility to vote in the collective best economic interest of CREF's and our mutual fund's shareholders[5], it is essential that we be able to confirm that our voting instructions have been implemented and our votes counted by each portfolio company or its agent. With the advent of majority voting for directors in uncontested elections, and concomitant demise of the broker-dealer discretionary vote in connection with such elections and executive compensation matters, the significance of each vote is heightened not just for us, but also for any other shareholder entitled to vote on these and other matters under applicable law (including but not limited to relevant state corporate laws, along with the SEC's proxy rules and other provisions of federal law).

Because the federal proxy rules enfranchise us and other beneficial owners by imposing responsibilities upon companies (Rule 14a-13 under the Securities Exchange Act of 1934 (the "Exchange Act"), broker-dealers (Rule 14b-1 the Exchange Act), and banks (Rule 14b-2 under the

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[3] Concept Release, SEC Rel. No. 34-62495 (Jul. 14, 2010), at 38.

[4] Broadridge is an outsourced provider of back-office services to the financial industry. Their services include proxy ballot distribution as well as proxy voting and tabulation services.

[5] TIAA-CREF's participants include working educators, academics, non-profit administrators, doctors and nurses (among many other individuals).

Exchange Act) – and, we submit, their respective agents – the SEC's development of a voting confirmation mechanism that does not affect who has the right to grant proxy voting authority should not conflict with or otherwise impinge upon state laws that vest exclusive voting rights in record owners.[6] We believe that the SEC otherwise has the power, under Sections 14(a) and 14(b) of the Exchange Act to require public companies, registered broker-dealers and banks (together with their respective agents) to reconcile and verify voting at the beneficial owner level. Although these parties are free to contract with third parties for the performance of their respective proxy delivery and/or voting responsibilities under the federal proxy rules, they continue to bear a legal obligation that cannot be displaced or avoided via contractual arrangements.

Shareholders' legitimate privacy interests could be preserved, as the SEC suggests, with a unique identification code that would permit the creation of a reliable audit trail while preserving the anonymity of any beneficial owner.

b. ***Institutional Share Lending Practices and Pre-Record Date Notice of Shareholder Meetings***

As is the case with many other institutional investors that manage assets for other investors in a fiduciary capacity, TIAA-CREF has two critical responsibilities: to exercise stock ownership rights with diligence and care and to attempt to generate optimal financial returns for our beneficiaries. Balancing these two responsibilities can create a dilemma for us in choosing between short-term and long-term strategies – whether to recall loaned shares in order to vote, or not to recall in order to preserve lending fee revenues on behalf of our beneficiaries. TIAA-CREF has established an internal securities lending policy to govern its practices with respect to portfolio stock lending and proxy voting, and will normally recall shares when we believe the exercise of voting rights may be necessary to maximize the long-term value of our investments despite the loss of lending fee revenues.

To comply with this policy and our fiduciary duties, TIAA-CREF may recall loaned shares when we determine that the benefits attendant to voting a particular portfolio company's shares outweigh the corresponding loss of lending fee revenue. Nevertheless, as the SEC points out in the Concept Release, it is difficult (if not impossible) to obtain information on corporate meeting agenda items until after the record date. Accordingly, we urge the SEC to consider requesting the New York Stock Exchange and other self-regulatory organizations impose, as a condition to initial or continued listing of voting stock, a requirement of pre-record date dissemination to the public – whether by the stock exchanges themselves or listed companies – of specified information relating

[6] Nor do we believe that state corporate laws necessarily would be impaired if the SEC were to amend the federal proxy rules to permit pass-through voting by beneficial owners via the execution of omnibus proxies in favor of customers by broker-dealers, banks and other institutional custodians of street-name shares. Compare, in this regard, a Delaware court's acceptance of the appropriateness under Delaware law of The Depository Trust Company's ("DTC") grant of proxy authority to participating broker-dealers and banks, as a reasonable means of avoiding the anomalous result of concentrating voting power for state-law purposes in DTC's nominee, CEDE & Co. *See* Kurz v. Holbrook, 989 A. 2d 140 (Del. Ch. Feb. 9, 2010)(holding, among other things, that the company's stock ledger for Delaware law purposes included DTC's official breakdown of the banks and broker-dealers holding street-name shares through DTC). This groundbreaking holding was deemed *obiter dictum,* and therefore without precedential effect, by the Delaware Supreme Court, which otherwise affirmed in part and reversed in part on other grounds. Crown EMAK Partners, LLC v. Kurz, 992 A. 2d 377 (Del. 2010).

to the record and meeting dates and agenda items. Alternatively, the SEC could direct public companies to disseminate this information pursuant to any method deemed permissible under Regulation FD, including but not limited to the filing (or submission) of a Form 8-K.

Another potential solution to this problem experienced by many institutional lenders would take the form of dual meeting and voting record dates where permissible under state law, enabling lenders to recall shares for voting purposes before the voting record date but after the notice of the meeting record date and agenda items has been disseminated. The SEC has described in some detail the pros and cons of several different approaches to amending the federal proxy rules and various related provisions to facilitate companies' use of dual record dates if otherwise allowed by the state of incorporation. Rather than taking a position now on any of these approaches, we believe it would be more helpful to wait until we have an opportunity to review corporate responses to the SEC's questions on the practical implications of implementing a dual record-date scheme.

2. *Proxy Advisory Services*

TIAA-CREF subscribes to the corporate governance research publications of several firms, and utilizes the electronic voting services offered by one of these firms. In addition, we prepare and follow our own internal proxy voting guidelines, using proxy advisory firm research solely as an informational tool to supplement our internally produced research. Moreover, we formulate our own voting decisions in-house, and use the third-party electronic voting platform only as a convenient and cost-effective instrumentality for transmitting our voting instructions to Broadridge, the agent for our custodial bank. In sum, these services inform and facilitate, but do not substitute for TIAA-CREF's exercise of independent judgment in arriving at our own decisions on how to direct the voting of portfolio company shares in the best interest of our beneficiaries.

We believe that there are many misconceptions regarding the way TIAA-CREF and other large institutional investors utilize the research reports prepared by the various proxy advisors. For example, as noted in the Concept Release, some critics contend that proxy advisors are controlling or significantly influencing voting outcomes without appropriate oversight.[7] However, we believe these concerns are somewhat overstated. While the proxy advisors offer a standard voting policy, they also give their clients the option to view specialized policies such as those geared towards to social investors or develop a custom policy based on an institution's internal guidelines. In this way, the vote mechanics and record keeping are technically "outsourced", but the institution itself retains the ability to customize the policy in furtherance of what the institution believes as a fiduciary to be in the best interests of their clients. In short, the institutional shareholder – not the proxy advisory firm – is making the ultimate voting decision.

Though we dedicate a significant amount of resources to corporate governance research and the voting of proxies, we still would have difficulty processing the 80,000 plus unique agenda items voted by our staff annually without utilizing this research. Particularly for routine meetings, the underlying information contained in these reports is organized in such a way as to allow our staff to more efficiently apply our internal policies. In our view, this is the most efficient way for

[7] *See* Concept Release, *supra* n. 1, at 114.

us to be able to leverage the research without necessarily following the recommendation of the proxy advisors.

Because of the way we utilize the services of the proxy advisors, TIAA-CREF has a significant stake in the accuracy and completeness of the research reports we purchase to aid our internal voting determination processes, and therefore shares the concerns of some critics that "the influence [of proxy advisory firms] is troubling in light of the limited accountability of ... [these] advisors. Proxy advisory firms do not have a financial stake in the companies about which they provide voting advice; they owe no fiduciary duties to the shareholders of these companies; and they are not subject to any meaningful regulation."[8] The need for accuracy and completeness is underscored by the mounting importance of the shareholder franchise, as more public companies shift from plurality to majority voting for directors in uncontested elections, the SEC has adopted the proxy access amendments,[9] broker-dealer discretionary voting authority has been curbed,[10] and shareholders have been empowered to vote on more executive compensation matters.[11]

We strongly urge the SEC to pursue all available regulatory avenues for enhancing the accuracy, integrity and reliability of proxy advisory firm voting recommendations, as a means of promoting informed shareholder voting. Rather than confining itself to the "either/or" proposition of amending the current exemptive provision, Rule 14a-2(b)(3), regulating these firms as investment advisers or creating an "NRSRO-style" model for regulation of the firms' subscriber-paid business, the SEC should proceed to publish proposed rule amendments soliciting specific comment on all three approaches. From our perspective as a major shareholder primarily interested in making informed voting decisions on behalf of our beneficiaries, we recommend that the Commission to craft an appropriate regulatory solution designed to assure the accuracy and reliability of voting-related information published by proxy advisory firms.

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[8] S. Choi, J. Fisch, and M. Kahan, *The Power of Proxy Advisors: Myth or Reality?*, 59 Emory L.J. 869, 872 (2010)(footnotes omitted). Based on their study of the influence exerted by all U.S.-based proxy advisory firms as measured in terms of voting outcomes, Professors Choi, Fisch and Kahan conclude that the largest of these firms, Institutional Shareholder Services ("ISS"), "is not so much a Pied Piper followed blindly by institutional investors as it is an information agent and guide, helping investors to identify voting decisions that are consistent with their existing preferences." *Id.* at 906.

[9] On October 4, 2010, the Commission stayed the effectiveness of newly adopted Rule 14a-11 and associated amendments to Rule 14a-8 and various other rules, pending the outcome of judicial review of these provisions in response to a challenge brought in the U.S. Court of Appeals for the D.C. Circuit by the Business Roundtable and the U.S. Chamber of Commerce. *See* SEC Order Granting Stay, In the Matter of the Motion of Business Roundtable and the Chamber of Commerce of the United States of America, SEC Rel. Nos. 33-9149; 34-63031; IC-2946 (Oct. 4, 2010).

[10] *See* SEC Rel. Nos. 34-62874 (Sept. 9, 2010) and 34-62992 (Sept. 24, 2010)(SEC releases approving, respectively, rule amendments adopted by the New York Stock Exchange ("NYSE") and the NASDAQ Stock Market LLC barring uninstructed broker-dealer votes of customer shares on matters related to executive compensation, in accordance with Section 957 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. Law. No. 111-203 (Jul. 21, 2010)(the "Dodd-Frank Act")). The Commission previously approved stock exchange rule amendments prohibiting broker voting on uncontested elections of directors. *See, e.g.*, SEC Rel. No. 34-60215 (July 1, 2009)(approving amendment to NYSE Rule 452).

[11] *See* SEC Rel. Nos. 33-9153; 34-63124 (Oct. 18, 2010)(proposing amendments to various Commission rules to implement Section 951 of the Dodd-Frank Act relating to shareholder advisory votes on executive compensation and "golden parachute" compensation arrangements).

In addition, we believe that the SEC's considerations concerning proxy advisors also must focus on whether or not institutional investors are using these services properly given their fiduciary duties in ensuring that they are voting in best interests of their clients. We believe that institutional investors have a responsibility to ensure they use proxy advisors in a way that is consistent with being a responsible investor.

3. *Need for Enhanced Education and Easier Voting Tools to Encourage Greater Participation by Retail Shareholders*

We share the SEC's concern regarding the apparent decline in retail investor voting levels observed in recent years. Whether or not this decline is attributable to implementation of the SEC's "notice-and-access" amendments relating to proxy delivery alone,[12] or to some combination of this and other factors, we have difficulty believing that client-directed voting ("CDV"), or what the SEC refers to as "advance voting instructions," is the appropriate solution at this time. Bearing in mind, however, that the paramount policy objective of the federal proxy rules is informed shareholder voting by all holders – individuals and institutions alike – the SEC instead should consider more creative ways consistent with this policy to stimulate broader retail investor interest and participation in the proxy voting process, short of opening the door to uninformed advance determinations by retail shareholders with respect to how they would like to vote on future meeting agenda items not yet conceived.

Arguments that some form of CDV is necessary to correct informational disparities between individual and institutional shareholders are flawed to the extent they rely on an unproven proposition, i.e., that institutions directly or indirectly "outsource" voting decisions to proxy advisory firms. In our case, that simply is not true for all the reasons outlined above. Assuming for discussion purposes only that this position may have merit as applied to some institutions, the answer is not to extend an ostensibly deficient voting model to retail investors who largely hold corporate stock through registered broker-dealers. To the contrary, there are other, more focused measures the SEC should evaluate before moving to an approach that has the potential to undermine the recent changes to stock exchange rules enabling member brokerage firms to vote uninstructed customer shares.

Specific corrective measures we recommend that the SEC consider to enhance investor education and thereby encourage greater retail voting participation, alone or in combination, include the following:

1. Address the problem of lengthy, impenetrable proxy statements that often obscure, rather than illuminate, key matters subject to a vote by assessing various methods of streamlining and highlighting material information. Borrowing from the SEC's Management Discussion and Analysis ("MD&A") interpretive guidance, the SEC could experiment with layering and the use of executive summaries for such dense disclosures such as the Compensation Discussion and Analysis ("CD&A"). In addition, the SEC could build on and expand the "notice and access" delivery model by permitting hyperlinking

[12] As the SEC points out in the Concept Release (at pp. 88-89), causation has not been established.

from summaries of key voting-related information to the more fulsome disclosures in the proxy statement now mandated by the proxy rules and Regulation S-K.

2. Focus on improvements to the Voting Instruction Form ("VIF") and other "ministerial" materials created by agents for proxy intermediaries such as broker-dealers and banks. For example, even if the SEC does not believe that the VIF is governed by Rule 14a-4 because it is transmitted solely to beneficial owners who lack proxy voting authority under applicable state law absent a pass-through, the agency could consider conditioning the use of such forms on adherence to the company's form of proxy with respect to the content and manner of presentation of agenda items. In this connection, we recommend that the SEC re-evaluate the nature and scope of the exemption upon which such intermediaries and their agents currently rely to communicate with beneficial holders, Rule 14a-2(a)(1).

3. Continue the ongoing SEC investor education initiatives to inform all shareholders, and retail shareholders in particular, of the importance of their vote and their rights as beneficial owners under the federal proxy rules, and explain how those rights can be asserted vis-à-vis the custodians of their shares (and the agents of such custodians). We believe that intermediaries, especially registered broker-dealers subject to extensive customer-protection requirements prescribed by the SEC and FINRA, should bear more responsibility in this area. For example, broker-dealers should be required to explain to customers the consequences of recent and future amendments to stock exchange rules governing member firm discretionary voting of uninstructed customer shares; the same should hold true for banks that follow NYSE Rule 452 and other, similar stock exchange requirements. We strongly encourage the SEC to pursue "potential opportunities to link proxy educational materials directly to online brokerage accounts and other locations that may be visited frequently by retail shareholders[,]"[13] and otherwise to explore whether broker-dealers could make notices of upcoming votes, proxy materials and VIFs available to customers through each customer's account page on the given broker's Internet website.

4. The SEC should consider the scope, format and content of communications between broker-dealers and their customers in connection with opening customer accounts. We agree with the SEC's observation "[t]hat the account-opening process may be a good opportunity to communicate important information about the shareholder voting process[,]"[14] including but not limited to the significance of electing OBO status.

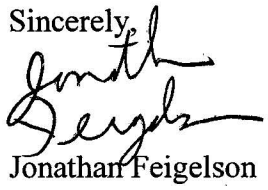
Summary and Conclusion

In closing, we thank the SEC for providing the public with an opportunity to respond to the questions outlined in the Concept Release. Again, we commend the SEC for identifying and analyzing the pros and cons of the current, highly complex proxy voting system, and urge the SEC to proceed to the proposing phase of this project. In our view, there is much more the SEC could

[13] Concept Release, *supra* n. 1, at 79 n.171.
[14] Id. at 80.

do to make this system operate more efficiently and effectively to serve the shared interest of public companies and their shareholders in promoting the informed exercise of voting rights by street-name holders of corporate stock, at a "reasonable" cost.[15] If you would like to discuss any of the issues raised in our letter, please do not hesitate to contact me at 212.916.4344, or my colleague, Stephen L. Brown at 212.916.6930.

Sincerely,



Jonathan Feigelson

Cc: Hon. Mary L. Schapiro, Chairman
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Hon. Kathleen Casey, Commissioner
Hon. Tory A. Paredes, Commissioner
Hon. Elisse Walter, Commissioner
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Brian Murphy, Division of Investment Management
Joshua White, Division of Risk, Strategy, and Financial Innovation

[15] *See* Rules 14a-13(a)(5) and (b)(5); 14b-1(c)(2); Rule 14b-2(c)(3).