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August 4, 2009

The Honorable Mary L. Schapiro
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

VIA ELECTRONIC AND REGULAR MAIL

Dear Chairman Schapiro:

The Shareholder Communications Coalition ("Coalition")[1] strongly supports your recent announcement that the Commission will undertake a comprehensive review of the proxy voting and shareholder communications system later this year. The Coalition is very appreciative of your leadership on this issue, given the many other significant matters currently before the Commission.

To help the Commission with its review of the proxy system, the Coalition has developed a Discussion Draft on Public Company Proxy Voting, with recommendations for modernizing and reforming the current framework. This Discussion Draft is an outgrowth of efforts by the members of the Coalition to improve the proxy system, which began formally with the establishment of the Coalition in 2005. The Coalition members also have been strong supporters of the Business Roundtable's Petition for Rulemaking Concerning Shareholder Communications, filed with the Commission in April 2004.

Since its inception, the Coalition has been a consistent advocate for a comprehensive evaluation of the proxy system. You can examine the Coalition's research and advocacy materials on its website at www.shareholdercoalition.com.

Attached is a copy of the Coalition's Discussion Draft for your review and consideration. As a result of increasing shareholder activism and a multitude of regulatory proposals which will place additional burdens on the proxy process, the time has never been more right to implement changes that take better advantage of Internet communications, competitive market forces, and best practices.

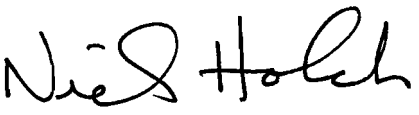
[1] The Shareholder Communications Coalition ("Coalition") comprises five associations: the Business Roundtable, the National Association of Corporate Directors, the National Investor Relations Institute, the Securities Transfer Association, and the Society of Corporate Secretaries & Governance Professionals.

The members of the Coalition look forward to discussing these recommendations with you, your fellow Commissioners, and with the SEC staff, as your agency examines this important area.

Please feel free to contact us with any questions you may have, or if you require additional information or clarification about any of the concepts presented in this Discussion Draft.

Thank you again for your leadership on these proxy "plumbing" issues.

Sincerely,



Niels Holch
Executive Director
Shareholder Communications Coalition

Attachment

cc: The Honorable Kathleen L. Casey
The Honorable Elisse B. Walter
The Honorable Luis A. Aguilar
The Honorable Troy A. Paredes
Kayla Gillan
Meredith Cross
Brian Breheny
James Brigagliano
Daniel Gallagher

SHAREHOLDER COMMUNICATIONS COALITION
DISCUSSION DRAFT
8/4/09

Public Company Proxy Voting: Empowering Individual Investors and Encouraging Open Shareholder Communications

The U.S. proxy voting and communications system is in desperate need of modernization. In this position paper, the Shareholder Communications Coalition ("Coalition")[1] describes the current system and its problems. The Coalition also offers recommendations for revising the current proxy rules to bring them into the 21st century and encouraging communications between shareholders and the companies in which they invest.

The U.S. Proxy Voting and Communications System

- The New York Stock Exchange ("NYSE") estimates that 70-80% of all public company shares in the United States are held in "street" or nominee name, meaning that the underlying beneficial owners of the shares are not the shareholders of record. Under the street name system, legal title and ownership of individual shares reside with a depository institution, such as the Depository Trust Company ("DTC").[2]

- State corporation law, which regulates most corporate governance matters, provides that only the shareholder of record has the right to vote on corporate matters, as the "legal" owner of the shares.

- When a public company seeks to hold a shareholder meeting, a record date is established to identify the current registered and beneficial owners who are eligible to vote at such shareholder meeting. The company notifies DTC, as the record holder for most of the corporate shares held in street name. DTC then provides a list of the brokers, banks, and other institutions holding a company's shares in street name and issues an "omnibus proxy" to these institutions, granting them the authority to vote proxies at the upcoming meeting. Companies are then required to request information from these intermediaries regarding the number of proxy packets that need to be provided to them for distribution to beneficial owners.

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[1] The Shareholder Communications Coalition currently comprises the following organizations: the Business Roundtable, the National Association of Corporate Directors, the National Investor Relations Institute, the Securities Transfer Association, and the Society of Corporate Secretaries & Governance Professionals. The Coalition's website is located at www.shareholdercoalition.com.

[2] The street name system was established to improve the efficiency of securities trading by eliminating the need to transfer paper stock certificates. Under this system, stock certificates are immobilized and stored in a central depository created for this purpose. Stock transfers are then handled through an electronic book-entry process, which records transfers among financial intermediaries.

- Under Securities and Exchange Commission ("SEC") and NYSE rules, brokers, banks and other financial intermediaries are responsible for handling proxy processing activities among their customers, including the delivery of proxy materials with information about the matters to be voted on at a shareholder meeting.

- Pursuant to these SEC and NYSE rules, public companies pay for the proxy processing services provided by these financial intermediaries. Reimbursement rates for the "reasonable expenses" of proxy services are established by the NYSE, subject to approval by the SEC. Companies have no choice in selecting a proxy service provider, exert little to no control over the services that are actually provided, and have no ability to negotiate fees with the service provider.

- The overwhelming majority of brokers and banks have contracted out their proxy processing responsibilities to a single service provider. Pursuant to written agreements, brokers and banks provide this service provider with contact information and share positions for their beneficial owners, along with a power of attorney to act as their agent in voting the shares for which they have been granted proxy authority. The service provider then distributes proxy materials through the mail or electronically to the beneficial owners of all company shares.

- As noted above, the service provider does not transmit actual "proxies" to beneficial owners; instead, it requests voting instructions from beneficial owners. Thus, in their proxy materials, beneficial owners do not receive proxy cards, but instead receive a voting instruction form ("VIF") that is to be used by them to indicate their voting preferences. Beneficial owners then return this VIF for processing by the service provider. The use of a VIF form is necessary because brokers and banks retain the authority to cast the actual votes and do not transfer their proxy authority to the beneficial owner level.[3]

- If a beneficial owner has not provided specific voting instructions at least 10 days before a shareholder meeting, NYSE Rule 452 permits brokers to vote the shares of such owner if the proposal before the shareholder meeting is considered a "routine" matter. Under an amendment to Rule 452 recently approved by the SEC, an uncontested election of corporate directors would not be considered a "routine" matter, thereby prohibiting brokers from voting shares without receiving instructions from beneficial owners.

- Under rules adopted in the mid-1980's, brokers and banks are required to classify beneficial owners as either Non-Objecting Beneficial Owners ("NOBOs") or Objecting Beneficial Owners ("OBOs"), generally based on indications by beneficial

[3] Since a broker or a bank retains the legal authority to vote at a shareholder meeting, a beneficial owner who attends such a meeting is not able to vote his or her shares using a VIF. Instead, the current rules require a beneficial owner to make special arrangements before the meeting to obtain a legal proxy to vote his or her shares. The use of a VIF at a shareholder meeting does not entitle a beneficial owner to vote in person at the meeting without a legal proxy.

owners at the time they open an individual account. Recent studies and surveys indicate a lack of uniformity among brokers regarding how beneficial owners are actually classified as NOBOs or OBOs. There are no standards or regulatory requirements for how a broker reviews this classification with its customers at account opening, or on a periodic basis to update this classification.

- The names of NOBOs may be disclosed to a public company by brokers and banks for a general communications purpose, although a list of NOBOs may not be used by a company for the distribution of its proxy materials. The names of OBOs may not be disclosed to a company for any purpose whatsoever.

- A further complication in the proxy system is the share lending programs of brokers and other intermediaries. Share lending enables a "short" investor to borrow shares from a "long" investor, with an agreement to return these borrowed shares at a later date. Share lending agreements generally assign voting rights to the borrower of the shares on a record date, causing the need for each intermediary to reconcile its long and short positions in order to accurately calculate the number of shares each investor is entitled to vote.

Problems with the Current Proxy System

- Research on the views and preferences of individual investors indicate a significant lack of knowledge about the proxy voting process and how it functions. This education gap is all the more critical due to current problems with the system, as detailed below.

- The NOBO/OBO classification system prevents public companies from knowing who many of their shareholders are and engaging in any meaningful communications with them. Research findings suggest that sometimes brokers use OBO as their default, meaning that some owners are classified as "OBOs" without their knowledge.

- At a time when changes in corporate governance are providing shareholders with more involvement and additional transparency, there is a critical need to ensure that public companies can communicate with their shareholders through a proxy system that is accurate and flawless. Under the current system, companies seeking to encourage more voting participation by beneficial owners cannot do so without using a circuitous and expensive process that is controlled primarily by one service provider acting as an agent for brokers and banks, yet funded by the public companies themselves. The continued reliance on this single provider for proxy administrative services has resulted in a system in which fees are established by regulatory fiat rather than by a free market that would take shareholder interests into account.

- The use of share lending schemes and certain derivative strategies by hedge funds and other institutional investors have permitted a decoupling of voting rights from the economic ownership of corporate shares. This decoupling of rights offers the

potential for, and there have been actual cases of, these investors manipulating the proxy voting process for the purpose of gaining a strategic market advantage.

- Furthermore, the increased use of share lending by brokers can cause a broker to cast more votes than it is entitled to cast in a corporate election. More than a majority of brokers hold their shares in fungible bulk, and do not reconcile their long and short positions to determine which investors are eligible to vote before a proxy mailing is sent. This lack of pre-mailing reconciliation by brokers when a record date is established makes it impossible for a vote tabulation to be completely accurate, a goal that is especially important in a close vote on a director election or a shareholder proposal.

- Reports in the news media of voting miscounts and delays in determining election results by proxy service providers have raised questions about the integrity of the proxy voting process. Additionally, there does not appear to be any ability for an independent third-party to audit and verify the results of a close election. These problems need to be addressed, as increasing investor activism and proposed regulatory changes are expected to cause many more close votes on shareholder proposals and director elections.

Proxy Practices in Other Countries

Unlike the U.S., other countries have avoided the creation of artificial barriers between public companies and their shareholders, choosing instead to have beneficial ownership transparency and permitting companies to have direct communications with their investors.

- In the United Kingdom, a public company has the right to learn the identity of individuals and institutions with voting rights and/or beneficial owner interests in its shares.[4] This information is acquired through a written notice process that permits a public company the power to investigate the ownership of its shares. The law imposes both civil and criminal penalties for a failure to provide the requested information within a required time period.[5]

- In Australia, a public company is required to keep a register with the name and address of all its shareholders, including beneficial owners.[6] The disclosure of identity and address information on matters unrelated to the interests or rights of shareholders in the affairs of the company is not allowed.[7]

- In Canada, a public company is permitted to have direct communications with its beneficial owners.[8] However, Canada has maintained the NOBO/OBO classification and it is still expensive for public companies to communicate with all their

[4] Section 793 of the Companies Act 2006.
[5] Sections 794 and 795 of the Companies Act 2006.
[6] Section 169 of the Corporations Act 2001. In the Corporations Act, shareholders are referred to as "members."
[7] Section 177 of the Corporations Act 2001.

shareholders in Canada because of the complex chain of intermediaries involved in the proxy process.

The Shareholder Communications Coalition Proxy Process Reform Plan

In light of the overwhelming problems with the current proxy voting and communications system, the Shareholder Communications Coalition offers the following recommendations as a starting point for discussions about reforming the system:

1. **Investor Education**. As a new proxy voting and communications system is implemented, a national investor education campaign should be launched to explain the proxy voting process and to encourage individual investors to vote their proxies at shareholder meetings. Survey research indicates that the substantial majority of individual investors do not understand the workings of the proxy system.

2. **NOBO and OBO Classification**. Public companies should have access to contact information for all of their beneficial owners and should be permitted to communicate with them directly. The NOBO and OBO classification for beneficial owners should be eliminated.

   Those beneficial owners wishing to remain anonymous should be permitted to register their shares in a nominee account with their broker, bank, or other third-party intermediary. Beneficial owners should not bear the cost of this registration, either directly or indirectly. Those who are currently classified as OBOs should have adequate notice of the elimination of their OBO status, to permit them to decide whether to establish a nominee account.

   Communications with beneficial owners should only be for purposes involving the corporate or business affairs of a company. Federal privacy regulations should apply to the use of beneficial owner information received from a broker or bank.[9]

3. **Competition among Proxy Service Providers**. The current functions of (a) beneficial owner data aggregation, and (b) proxy communications distribution should be separated, providing a public company with the opportunity to select a proxy distribution provider of its own choosing. The proxy distributor should be responsible for transmitting the proxy statement and proxy forms to all shareholders, once the beneficial owner list is obtained from an entity serving as the data aggregator. The prices for proxy distribution and

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[8] National Instrument 54-101.

[9] SEC regulations permit the disclosure of information: (a) "necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes"; or (b) "as permitted by law." See 17 C.F.R. § 248.14(a), 17 C.F.R. § 248.14(b)(2), and 17 C.F.R. § 248.15(a)(7)(i). Similar privacy provisions apply to banks.

communications services should be established by open competition among service providers handling these functions, based on value to end users, and not through a fee schedule established by regulators.

4. **Beneficial Owner List Compilation**. The lists of beneficial owners used for shareholder meetings and other communications purposes should be maintained by a data aggregator selected by a special committee of the NYSE established for this purpose. The compilation of the beneficial owner lists for shareholder meetings should become a non-profit function, and a fee schedule should be established for access to the beneficial owner lists by the NYSE.

   The data aggregator would obtain beneficial owner contact information from all brokers, banks, and other intermediaries, but no information about any intermediary relationship with a customer would be provided. In other words, as is the case today, the names of brokers and other intermediaries with whom the beneficial owners maintained their accounts would not be disclosed.

   Beneficial owner positions should be fully reconciled as of a specified record date for a shareholder meeting. This share position reconciliation should include shares on loan and any "failure to deliver" shares. All intermediaries would be required to reconcile beneficial owner and other positions back to their total holding position at DTC or another depository institution.

   Access to beneficial owner lists should be non-discriminatory. Both a company and its shareholders seeking to communicate with beneficial owners should have equal access to the beneficial owner list, upon payment of the NYSE-approved fee for this list.[10] As noted above, beneficial owner lists should only be used for communications involving the corporate or business affairs of a company.

   The special NYSE committee should use a competitive bidding process to select and retain the data aggregator. The committee should enter into a contractual agreement with the data aggregator for a recommended term of five (5) years.

   The special NYSE committee should also be responsible for the ongoing oversight of the data aggregator selected for this purpose. The committee should comprise representatives of brokers, banks, issuers, institutional investors, individual investors, and other identified stakeholders.

5. **Proxy Vote Counting and Tabulation**. Proxy votes should continue to be counted and tabulated using the current practices governed by state law, including, when necessary, the services of an independent inspector of elections.

[10] Access to the beneficial owners list will be provided at the same reimbursement fee to company shareholders wishing to communicate with other shareholders.

6. **Beneficial Owner Proxy Authority**. Proxy voting authority should be transferred to each beneficial owner, as of the record date established for a shareholder meeting, through the same omnibus proxy process that is currently employed by DTC. Beneficial owners would be free to transfer their proxy authority back to their broker or bank—through a client-directed voting agreement or similar arrangement—or to another third-party intermediary. A transfer of proxy authority to the beneficial owner level eliminates the need for broker discretionary voting under NYSE Rule 452 and also eliminates the need for brokers and banks to provide their service provider with a power of attorney for proxy voting purposes.[11]

7. **Integrity of Proxy Voting Process**. The proxy voting process should be fully transparent and verifiable, starting with the compilation of a reconciled list of beneficial owners eligible to vote and ending with the final tabulation of votes cast at a shareholder meeting.

   Brokers and other financial intermediaries engaged in share lending (or with "failure to deliver" positions) should be required to reconcile their share positions as of the record date for each shareholder meeting. This reconciliation should occur before an intermediary transmits record date beneficial owner information to the data aggregator discussed above and before proxy forms are mailed to beneficial owners and registered shareholders. All record date positions maintained by financial intermediaries should be reconciled early in the voting process, to avoid distributing proxies to ineligible shareholders and to avoid discrepancies in tabulating final vote counts.[12]

   The vote counts on matters before a shareholder meeting should be auditable and capable of third-party verification, so that a validation of the final tabulation of the votes of both registered and beneficial owners can occur.

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[11] If this recommendation is adopted, there would no longer be any broker discretionary voting pursuant to NYSE Rule 452, which currently permits brokers to vote uninstructed shares on routine matters at a shareholder meeting. The SEC recently approved an amendment to Rule 452 that would no longer permit brokers to exercise this discretionary authority in uncontested director elections.

[12] This proposed process would be facilitated by a recent amendment to the Delaware General Corporation Law permitting a board of directors to fix one record date for shareholders entitled to notice of a meeting and a separate record date for determining the shareholders entitled to vote at such a meeting. This new amendment should help a company better align the economic and voting interests of its shareholders and reduce the risk of having investors with voting rights but no share ownership as of the date of the shareholder meeting.