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April 1, 2015

The Honorable Mary Jo White  
Chair  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549

Subject: SEC Proxy Voting Roundtable, File No. 4-681

Dear Chair White:

On behalf of the Shareholder Communications Coalition (“Coalition”),<sup>1</sup> let me express our appreciation to the Securities and Exchange Commission (“SEC”) members and staff for holding a Proxy Voting Roundtable on February 19, 2015. The Coalition was privileged to be represented on the second panel at the Roundtable, discussing retail investor participation in the proxy process.

A 90-minute panel discussion is not nearly enough time to review such a complex topic as how best to improve voting participation by retail investors at shareholder meetings. In fact, several of the short-term solutions to the problem discussed at the Roundtable—such as client-directed voting and an enhanced broker internet platform—are not going to significantly increase investor engagement without the SEC also addressing the broader problems within the current proxy system.

These short-term fixes—while meritorious—are symptomatic of the widespread frustrations with the proxy process and would be of secondary importance in a more modern and transparent proxy system. Other reform proposals—such as a universal proxy ballot—raise significant issues that cannot be successfully addressed without attention to the mechanics of both the shareholder communications and proxy voting processes.

For more than a decade—starting with a Business Roundtable Petition for Rulemaking submitted to the Commission in 2004—the Coalition has been advocating

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<sup>1</sup> The Shareholder Communications Coalition ([www.shareholdercoalition.com](http://www.shareholdercoalition.com)) comprises three professional associations representing the interests of public companies in shareholder communications and proxy voting issues: Business Roundtable, the Society of Corporate Secretaries & Governance Professionals, and the National Investor Relations Institute.

for a comprehensive review and overhaul of the regulations governing the proxy system.<sup>2</sup> The Coalition has submitted numerous comment letters and discussion drafts to the SEC, describing the many problems with the current system and advancing a number of regulatory proposals to reform the shareholder communications and proxy voting processes.<sup>3</sup>

A considerable amount of work has already been accomplished by the SEC in evaluating the proxy system and initiating discussions about reforms to the system. The Commission organized several Roundtables on proxy issues in 2007, in addition to the Proxy Advisory Services Roundtable in 2013 and the just completed Proxy Voting Roundtable.

The Commission also issued a Concept Release on the U.S. Proxy System in 2010, after a year-long staff evaluation of problems with the existing proxy process.<sup>4</sup> This Concept Release described the inner workings of the system and proposed a number of reforms to SEC rules. More than 300 comment letters were received in response to the Concept Release, many of which advocated for reforms very similar to the ideas advanced by the Coalition and its members.<sup>5</sup>

Broader reforms to the proxy system are necessary if proxy participants are to be able to increase their engagement with retail investors. Currently, due to the constraints of the shareholder communications system, most public companies must rely on communications with retail holders once a year, through the distribution of annual meeting proxy materials. The Coalition believes that retail investor participation in proxy voting would be increased significantly and more effectively through a system that encourages *active and ongoing communications* with those investors.

In order for this to be achieved, the SEC must update and modernize its shareholder communications rules—adopted more than three decades ago. These rules have been eclipsed by the transformation of communications technologies, both within the financial industry and in our broader society. Our society has also moved rapidly from the use of regular mail and paper-based communication methods to electronic communications. The Commission's rules must reflect this transition.

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<sup>2</sup> See Business Roundtable, Request for Rulemaking Concerning Shareholder Communications, SEC File No. 4-493, April 12, 2004.

<sup>3</sup> See, e.g., Letter from Niels Holch, Executive Director, Shareholder Communications Coalition, to Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, SEC File No. SR-NYSE-2006-92, March 27, 2009; Letter from Niels Holch, Executive Director, Shareholder Communications Coalition, to The Honorable Mary L. Schapiro, Chairman, U.S. Securities and Exchange Commission, August 4, 2009; and Letter from Niels Holch, Executive Director, Shareholder Communications Coalition, to Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, SEC File No. S7-14-10, October 20, 2010.

<sup>4</sup> Concept Release on the U.S. Proxy System, 75 Fed. Reg. 42982 (July 22, 2010).

<sup>5</sup> See SEC Comment Letter File No. S7-14-10, available at <http://www.sec.gov/comments/s7-14-10/s71410.shtml>.



### Problems with the Current Shareholder Communications System

Public companies are very frustrated with the current circuitous and cumbersome shareholder communications system and its bifurcated structure. Companies can communicate directly with their registered shareholders, who typically represent only 25% of shares outstanding. However, under SEC and stock exchange rules, companies may only communicate with their street name shareholders—representing the other 75%—through intermediaries, primarily brokers and banks.<sup>6</sup>

While the street name system works very efficiently to process and settle securities trades, it has fostered a cumbersome and expensive process for proxy and other shareholder communications.<sup>7</sup> In an age of instant communication, public companies should not be required to use multiple layers of financial intermediaries to communicate with their shareholders.

In addition, the SEC rules establishing an Objecting Beneficial Owner (“OBO”) and Non-Objecting Beneficial Owner (“NOBO”) framework are discouraging robust communications between companies and their retail shareholders.<sup>8</sup> The OBO/NOBO system, of which many retail shareholders are unaware, also makes it difficult for companies to identify and communicate with mid-size and smaller institutional holders of their shares.<sup>9</sup>

For these reasons, it is unlikely that the short-term fixes discussed at the Proxy Voting Roundtable will change—in a significant manner—the lack of retail investor engagement in proxy voting. Instead, a regulatory framework that encourages more direct communications between public companies and their shareholders—as well as more communications among shareholders—is much more likely to stimulate increased voting participation by all investors.

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<sup>6</sup> After a paperwork crisis occurred in the 1970’s, Congress authorized the “street name” system of stock ownership, to enable securities transactions to be processed and cleared more efficiently. Today, more than 75% of all public companies’ shares are held in street name, meaning that brokers and banks hold shares on behalf of their clients, the underlying beneficial (or “economic”) owners.

<sup>7</sup> Under SEC and stock exchange rules, brokers and banks are responsible for distributing annual meeting materials provided by public companies (and requesting voting instructions) from beneficial owners who are holding their shares in street name. Since many shareholders do not attend annual meetings in person, companies need to solicit votes through proxies that function in the same manner as absentee ballots.

<sup>8</sup> Beneficial owners are classified by brokers and banks as either Objecting Beneficial Owners (“OBOs”) or Non-Objecting Beneficial Owners (“NOBOs”). Public companies are not permitted to communicate with OBOs for any reason. Companies may communicate with NOBOs, but may not send them proxy materials.

<sup>9</sup> See, e.g., Opinion Research Corporation, *Investor Attitudes Study*, at 3, April 7, 2006, available at <http://www.shareholdercoalition.com/NYSEORCInvestorStudy4706.pdf> (“Overall, there is a great deal of confusion about the proxy voting process, even though most investors say they open and read at least some of their proxy statements, and nearly half claim to always vote on the issues identified. ... Just 20% remember being asked if they wanted their contact information provided to the companies whose stock they had purchased so the companies could communicate directly with them.”).

### The Need for a Direct Communications System

Instead of a bifurcated proxy system (between registered and street name shareholders), public companies should have access to contact information for *all of their shareholders* and should be permitted to communicate with them directly.

In order to facilitate a direct communication framework, the SEC should permit public companies to obtain a list of their street name shareholders whenever necessary. This would require eliminating the OBO/NOBO distinction and permitting companies to assume responsibility for sending proxy materials to all their shareholders (and not just their registered holders).<sup>10</sup>

This regulatory proposal can address the privacy interests of investors. Any institutional or retail shareholder who wishes to remain anonymous could elect to do so by appointing a nominee (i.e., a broker, bank, or other entity), which some institutional investors currently do today. Additionally, individual shareholder preferences regarding the type and frequency of contact—by a company or another shareholder—can be collected and recorded electronically.

A final step that the SEC should consider—in order to facilitate active and ongoing communication with retail shareholders—is to permit a public company to deliver proxy materials (and other communications) electronically to all its shareholders, except where a specific shareholder elects to receive such materials and communications in paper form. Given the increased and widespread use of electronic communications discussed above, this would benefit investors and dramatically reduce costs.

### The Need to Improve the Proxy Voting Process

The mechanics of proxy voting also need to be improved. For many decades—including when the SEC's proxy rules were first promulgated—most annual meetings were routine and few matters were contested. The substantial majority of proposals and items at shareholder meetings were resolved by large vote margins and the exact vote count in each of these elections was rarely an issue.

As a result of a number of factors—increased shareholder activism, new regulatory requirements (e.g., Rule 452, Say on Pay), and strengthened corporate governance standards—corporate elections are now often competitive, with close votes occurring more frequently.

Like the shareholder communications system, the proxy voting process is bifurcated. Each corporate election has two different tabulators: (1) the transfer agent who tabulates registered shares and typically serves as the Inspector of Election at a

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<sup>10</sup> The mechanics of this proposed framework would typically be handled by public companies engaging third-party service providers of their own choosing, such as a broker-agent (e.g., Broadridge) or their current transfer agent.



shareholder meeting; and (2) a broker-agent—generally Broadridge—tabulating the street name shares.

As proxy materials are distributed to shareholders, registered holders receive and submit proxy cards to a transfer agent for tabulation. As a result of the mechanics of the street name system, beneficial owners receive and submit back Voting Instruction Forms (“VIFs”), which follow a different process than the use of proxy cards at the investor level.<sup>11</sup>

The current proxy voting process also produces inaccuracies. Share lending practices at the retail investor level have generated confusion over which investors are eligible to vote as of a record date. Additionally, a lack of coordination and communication among depository institutions, nominees, and tabulators can cause inaccurate vote counts.

Given the complexity of the voting system and the prospect of more elections with close votes, the proxy voting system can and should be improved. Proxy voting should be accurate, verifiable and auditable, starting with the development of an eligible voters list and ending with the ability of a third-party to be able to review and verify the results in a close contest.

### Conclusion

The U.S. proxy system is complicated and multi-faceted, involving several layers of intermediaries who are not the economic owners of shares. This system makes it very difficult for public companies to know who their shareholders are and to communicate with all of them in an effective manner. Additionally, the existing proxy system is cumbersome and expensive, making it difficult to distribute proxy materials, solicit shareholder votes, and verify an accurate vote count.

As the SEC finalizes its work to implement Dodd-Frank and JOBS Act directives from Congress, the Coalition urges Commission members and staff to move forward with updating and modernizing SEC rules on shareholder communications and proxy voting. We believe that such an effort would produce far greater long term benefits for investors than a focus on short-term fixes to a broken system.

Thank you for your consideration of our views. If the Coalition and its members can provide any additional information helpful to your evaluation of these issues, please feel free to contact me, or any one of our members.

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<sup>11</sup> Street name shareholders, unlike registered holders, are not the record owners of their shares. An omnibus proxy process is used currently to transfer voting authority from a depository institution—such as the Depository Trust Company—to the brokers and banks that will submit aggregated votes on behalf of their customers to be tabulated in the final vote count. A better system would be to use the existing omnibus proxy process to transfer voting authority down to the investor level from each depository institution, permitting beneficial owners to vote proxy cards in the same manner as registered shareholders.

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Sincerely,

A handwritten signature in black ink that reads "Niels Holch". The signature is written in a cursive style with a large, looped "N" and "H".

Niels Holch  
Executive Director  
Shareholder Communications Coalition

cc: The Honorable Luis A. Aguilar  
The Honorable Daniel M. Gallagher  
The Honorable Kara M. Stein  
The Honorable Michael S. Piwowar  
Keith Higgins, Division of Corporation Finance  
Stephen Luparello, Division of Trading and Markets