

American Federation of Labor and Congress of Industrial Organizations



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October 20, 2010

Sent via electronic mail
rule-comments@sec.gov

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

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

Dear Ms. Murphy:

On behalf of the American Federation of Labor and Congress of Industrial Organizations (the "AFL-CIO"), I welcome this opportunity to provide comment to the Securities and Exchange Commission on the Concept Release on the U.S. Proxy System, File No. S7-14-10.

The AFL-CIO is the country's largest labor federation and represents 12.2 million members. Union-sponsored pension and employee benefit plans hold more than \$480 billion in assets. Union members also participate directly in the capital markets as individual investors and as participants in public employee and corporate sponsored plans. Pension and employee benefit plans have a strong interest in ensuring that the proxy voting system works accurately and efficiently because proxy votes are plan assets that are required to be managed in accordance with plan economic interests.

The Current Proxy Distribution and Voting Process

Proxy voting is the very foundation of the corporate governance system, and it is frequently the only means of communication between shareholders and public companies on significant issues affecting investors. In 2009, investors used the proxy voting system to vote more than 600 billion shares at more than 13,000 annual shareholder meetings. As SEC Chairman Mary Schapiro said recently, "To result in effective governance, the *transmission* of this communication must be — and must be *perceived* to be — timely, accurate, unbiased and fair."¹

¹ Opening Statement of SEC Chairman Mary Schapiro at the July 14, 2010 open meeting.

While we welcome the SEC's review and oversight of the proxy voting system, we are concerned about the unintended consequences of dismantling a system that has worked well for investors for several decades, and we therefore urge the SEC to act with caution in proposing any rule changes. Under the current system, Broadridge Financial Solutions (part of Automatic Data Processing until 2007) processes and distributes proxy materials to beneficial owners who hold their securities through banks and brokerages in "street name" instead of having them directly registered in their own name. In our experience, this existing system generally works well for beneficial shareholders.

The Proxy Working Group established by the New York Stock Exchange in 2005 to review the proxy process has observed that "the current proxy communication system is generally efficient and accurate." A number of institutional investor representatives who appeared before the Proxy Working Group expressed support for the existing system and noted that the present proxy process is perceived as "impartial, reliable and efficiently administered."² The report also noted that the role of Broadridge Financial Solutions (then Automatic Data Processing) as a third-party intermediary "has resulted in a system which generally provides shareholders with their proxies, and issuers with the votes from those proxies, in a timely manner and on an accurate and trustworthy basis."³

Accuracy, Transparency, and Efficiency of the Voting Process

The role of Broadridge Financial Solutions as a third party intermediary between corporate issuers and beneficial shareholders helps to ensure the accuracy and integrity of the proxy voting process. Corporate issuers rarely hire independent tabulators to count votes for routine shareholder meetings. Instead, the vote results of most shareholder meetings are tabulated by stock transfer agents who are not necessarily independent of corporate management. However, the existing system helps to protect against vote tampering because most proxy votes are cast through Broadridge Financial Solutions. Any changes to the existing system should include safeguards to guarantee that shareholder votes are accurately and faithfully tabulated.

The existing system also permits beneficial shareholders to cast their proxy votes anonymously even though many issuers have not adopted confidential voting policies. This protects beneficial shareholders from intrusive proxy solicitation efforts when they cast votes against the recommendations of

² Report and Recommendations of the Proxy Working Group to the NYSE, June 5, 2006, page 25.

³ Id., page 28.

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corporate management. For this reason, we would support the use of an anonymous unique identification code to protect investors' privacy in a proxy vote confirmation process. Moreover, shareholders should have equal access to vote confirmations to ensure that the vote results of corporate elections are not tampered with.

We also support requiring improved disclosure of shareholder meeting agendas to assist institutional investors who lend securities. Many institutional investors who lend shares have proxy voting policies to recall their shares to vote on important issues. We believe that the stock exchange listing standards should be amended to require companies to publicly disclose the agenda for annual meetings sufficiently in advance of meeting record dates so that institutions have time to recall their shares and vote their proxies. We would support a requirement that corporate issuers publicly disclose the agenda for the annual meeting through an 8-k filing with the SEC, a press release, and a notice on their corporate website.

Lastly, we believe that the fees for the distribution of proxy materials are appropriately regulated by the New York Stock Exchange under Rule 465 and approved by the SEC. In our view, centralization of the distribution of proxy materials to beneficial shareholders has created efficiencies such as a uniform electronic voting platform. Any changes to the distribution of proxy materials could result in unintended consequences for institutional shareholders who vote thousands of proxies each year. Fee regulation also ensures that shareholders are able to distribute proxy materials to each other on the same basis as corporate management. Any changes to this system for the distribution of proxy materials must create a level playing field for communications by shareholders and corporate management.

Communications and Shareholder Participation

Any changes to the proxy system should include safeguards to protect investors' privacy interests. Since 1985, the SEC has required securities firms and banks to provide companies, at their request, with contact information for beneficial owners who do not object to being contacted directly by companies. These shareholders are often referred to as non-objecting beneficial owners ("NOBOs"). However, when a beneficial owner objects to the disclosure of contact information—often referred to as objecting beneficial owners ("OBOs")—companies may only contact the shareholder through an intermediary. Many investors prefer OBO status because they want to maintain their anonymity, they do not wish to disclose their holdings, and they do not want proxy solicitors

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contacting them to influence or hamper their votes. We are concerned that eliminating the NOBO/OBO rules may impose costs on investors including pension funds that want to maintain their anonymity from corporate issuers.

We are concerned that proxy voting by retail shareholders has declined since the SEC allowed corporate issuers to send shareholders a “notice and access” e-proxy notice instead of a written proxy statement and a paper ballot. During the 2009 proxy season, only 4 percent of retail investor accounts voted their shares after they received an e-proxy notice.⁴ Because many retail investors are unable or unwilling to electronically obtain proxy materials and vote, we believe that the electronic dissemination of proxy materials should be “opt-in” rather than “opt-out.” Moreover, we strongly believe that the e-proxy rules should not permit shareholders to vote before they have received a proxy statement. If the SEC’s proxy disclosure regulations are to be given effect, shareholders must be provided with proxy statements before voting. For this reason, we oppose any change that would separate proxy ballots from their accompanying proxy statement.

We believe that investor education is critical to encouraging retail investor participation in proxy voting. In this regard, any rule change to permit banks and brokerages to vote on behalf of retail investors using advance voting instructions (otherwise known as “client directed voting”) must include safeguards to protect the voting preferences of shareholders. For client directed voting to be democratic, retail investors need to be furnished proxy voting research from independent third parties. A client directed voting system would need to provide retail investors with independent research to help establish voting instructions, as well as an independent agent to apply their voting instructions to individual votes. A simplistic approach to client directed voting will not be able to respond to evolving corporate governance issues that shareholders are asked to vote on. Any rulemaking must address these issues to prevent a return to bank and broker voting of their clients’ uninstructed shares.

Relationship between Voting Power and Economic Interest

Institutional investors have substantially increased their use of proxy advisory firms in the past 25 years, reflecting the tremendous growth in institutional assets over that time and the fiduciary obligation to vote shares. However, the reality is that while many institutional shareholders subscribe to

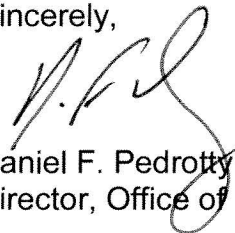
⁴Broadridge Financial Services, Notice and Access: Statistical Overview of Use with Beneficial Shareholders, June 30, 2009.

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proxy voting services, they do not generally adopt their recommendations wholesale. Instead, institutional shareholders generally exercise judgment in analyzing recommendations from proxy advisory firms. Moreover, the proxy voting policies of proxy advisory firms reflect the corporate governance preferences of their institutional clients. To address any potential conflicts of interest, we believe that proxy advisory firms should disclose to their clients when corporate issuers purchase consulting services.

If you have any questions about our views on the proxy system, please call the AFL-CIO Office of Investment at 202-637-3900.

Sincerely,



Daniel F. Pedrotty
Director, Office of Investment

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opeiu #2, afl-cio