VIA EMAIL AND FEDERAL EXPRESS

October 20, 2010

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: File Number S7-14-10

Dear Ms. Murphy:

NYSE Euronext, on behalf of the New York Stock Exchange LLC ("NYSE"), NYSE Amex LLC ("NYSE Amex") and NYSE Arca Inc. ("NYSE Arca"), appreciates the opportunity to comment on the Securities and Exchange Commission's concept release on various aspects of the U.S. proxy system (Release No. 34-62495; File No. S7-14-10) (the "Concept Release"). NYSE Euronext supports the Commission's consideration of an update to its rules to promote greater efficiency and transparency in the system and enhance the accuracy and integrity of the shareholder vote.

I. Background

The NYSE has had a significant role in proxy matters for many years, even prior to the Commission's establishment of rules to govern the proxy process at SEC-registered corporations. Its earliest role, and one that persists to this day, involves the setting of rules governing the voting of stocks held in "street name" by broker dealers that are members of the NYSE. Related to this, and also of continuing relevance to the proxy process, are rules relating to the fees which member broker dealers are entitled to receive for forwarding proxy materials to beneficial owners.

Given its experience with these aspects of the proxy voting process, NYSE will focus its comments on two specific areas covered in the Concept Release, proxy distribution fees and advance voting instructions (client directed voting).

Our comments will reflect what we believe should be guiding principles in assessing how to reform proxy regulation:

- Remove self regulatory organizations from the role of specifying the fees to be paid for proxy distribution services.

- Provide for competition among service providers, to the extent possible, while at the same time insuring that rules maximize the opportunity to have service that is efficient and reliable.
- Provide transparency to the public regarding how various processes work, so that pricing and efficacy can be knowledgably evaluated.

II. Proxy Distribution Fees

As noted in the Concept Release, SEC rules require broker-dealers and banks to distribute proxy material to beneficial owners, but the obligation is conditioned on their being assured of reimbursement of their reasonable expenses. The SEC has relied on stock exchange rules to specify the reimbursement rates, and it has been the rules of the NYSE that have established the standard used in the industry.

Since 1937 the NYSE has specified the level of reimbursement which, if provided to the member broker-dealers, would obligate them to effect the distribution.[1] The rates were at first a matter of policy, but were codified in 1952, and have been revised periodically since then. The last revision was finalized in 2002. The Exchange has, at least since the late 1990's, taken the view that the rates should represent a consensus of issuers and broker-dealers. The Proxy Working Group ("PWG"), created by the NYSE in 2005, was composed of a diverse group of individuals from issuers, broker-dealers, the legal community and investors, and focused on several different aspects of the proxy process, most particularly the rules providing for broker voting of shares for which no voting instructions were received from the beneficial owner. The PWG also looked at whether the NYSE rules on proxy distribution fees should be made applicable to the SEC's then new "e-proxy" system, and concluded that as an initial matter, they should not. In part, the PWG believed it was appropriate to allow some time during which market forces might create a consensus regarding the appropriate kind and level of fees under the new e-proxy rules.

The PWG Reports are referenced in the Concept Release, and the kinds of concerns over proxy distribution fees that were voiced to the PWG are the same as those outlined in the Concept Release. Broadridge Financial Solutions, Inc. is the third-party vendor utilized by almost all broker-dealers for the distribution of proxy materials, and there is a question raised by both issuers and potential competitors of Broadridge whether competition might result in lower fees to issuers. In part they question whether Broadridge is utilizing the most efficient mailing process, since the NYSE rules simply contemplate that issuers will pay the actual out of pocket postage cost incurred by the broker-dealers (or their agent). They also question whether the incentive fees, first introduced in the late 1990's to encourage the elimination of paper mailings, are still cost efficient and whether they are transparent and reasonable.

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[1] While these distribution fees are often described as "fixed" by the NYSE, the specified fees are those which, if payment is assured, obligate the broker-dealers to effect the distribution. Broker-dealers and corporate issuers are actually free to agree to either higher or lower distribution fees.

The Concept Release states that "it appears to be an appropriate time for SROs to review their existing fee schedules to determine whether they continue to be reasonably related to the actual costs of proxy solicitation".[2] We agree that it is, and we have brought together a Proxy Fee Advisory Committee ("PFAC") composed of representatives of issuers, broker dealers and investors to undertake this task.[3]

The PFAC will review the current rules and how they are applied, and will meet with, among others, Broadridge and other providers of proxy distribution services to gather information on what is necessary to efficiently and effectively perform such services, and what that effort should cost. We expect that the PFAC's work will produce recommendations, which the NYSE will submit to the SEC in the form of a rule change proposal. That proposal will of course be published for public comment, prior to any SEC approval and effectiveness of new rules.

Notwithstanding our establishment of the PFAC, we do not believe that proxy distribution fees should necessarily continue to be specified by SRO rule. However, at the same time we recognize that any change to the current rule and fee structure could take a considerable period of time to effectuate, and in the interim it is appropriate to obtain the most up to date analysis of what SRO-rule-based fee levels should be while the SEC considers whether the mechanism by which those fees are determined should be changed.

As indicated above, the NYSE would welcome a movement away from utilizing SRO rules to set the default proxy distribution fees. While NYSE has had a long history as an innovator and important source of rules for the U.S. proxy process, the SEC has long since taken over the field as the source of regulation for that process. We believe that the very reduced role of exchanges in proxy regulation means that they may no longer be the best source of rulemaking in the proxy fee area.

If SRO rules are no longer to provide the regulation of pricing in proxy distribution, SEC rules must, by default, play a role. Recognizing this, however, we believe it will also be beneficial for those rules to provide the maximum opportunity for competition and market based pricing. Indeed, this is consistent with one of the maxims endorsed by the NYSE-sponsored Commission on Corporate Governance in its recent report.[4]

Several commenters on proxy distribution fees have suggested that there be a central data aggregator that is given the right to collect beneficial owner information from securities

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[2] Concept Release at 59.

[3] Information on the PFAC will be available on nyx.com.

[4] Principle 5 in the CCG Report notes "a preference for market-based governance solutions whenever possible". See CCG Report at 5, available at http://www.nyse.com/pdfs/CCGReport.pdf. We also note that the absence of an exchange rule specifying pricing for "e-proxy" or "notice and access" has resulted in pricing which, while apparently not reflective of competition among multiple providers, does reflect a private sector pricing process that may offer some useful data for our PFAC to study as it does its work.

intermediaries, and is required to provide that information to any agent designated by the issuer.[5] This is intended to facilitate competition for the distribution function, allowing market forces to set the price for that function. At least one commentator[6] has suggested that the central data aggregator be a non-profit entity, with a fee schedule and service provider selected by a special committee of the NYSE.

As noted above, the NYSE does not believe that an exchange today should play that kind of role in the proxy distribution process, but we do think the concept of a central data aggregator should be further explored.

Aggregation of beneficial owner information is of principal concern to two constituencies, intermediaries and issuers. Ideally, then, they are the constituents that should collectively own and control the data aggregator, so that its processes and costs can reflect the consensus between them regarding the best way to accomplish the tasks necessary to comply with SEC proxy rules, while allowing the issuers the kind of communication they desire, permitting the intermediaries to protect customer interests, and insuring effective and cost-efficient processing for all. The SEC by rule can require that intermediaries provide beneficial owner information to the central aggregator, and that issuers utilize its information to effect proxy distribution. The organization and governance structure of the data aggregator organization can be subject to SEC approval, to insure that changes therein are fair and transparent.

NYSE would be willing to participate in an industry task force intended to study whether such a data aggregator is not only possible but desirable, and if so, how it might be structured and organized.[7] We also believe that our PFAC will produce findings that will be useful to those engaged in that effort. The PFAC's findings will be made publicly available and thus accessible for an industry task force to use.

Separately, we note that, as the Concept Release recognizes, there is significant concern among commenters that the current NOBO/OBO rules operate to limit the access of issuers to their street name shareholders. The NYSE supports reform that would promote greater, more direct access by issuers to their shareholders, both to facilitate communication and transparency, and to hopefully contribute to a more efficient, cost-effective communication process.

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[5] See, for example, the Concept Release description of the suggestion from the Shareholder Communications Coalition (Concept Release at text accompanying n. 139), and Council of Institutional Investors White Paper on The OBO/NOBO Distinction in Beneficial Ownership, prepared by Alan L. Beller and Janet L. Fisher, at p. 21.

[6] See Shareholder Communications Coalition Discussion Draft at 6, available in the public comment file to the Concept Release.

[7] We recognize that this data aggregator will face challenges in arranging for the interested parties to be represented in its governance. The number of interested issuers, in particular, is very large, and it may be necessary to ask an existing broad-based organization, such as the Society of Corporate Secretaries and Governance Professionals, to take the role of representing the interests of all issuers.

III. Advance Voting Instructions (Client Directed Voting)

The NYSE has had rules regarding proxy voting by member broker-dealers since 1927, and has had essentially the same kind of rule as it has today since 1937, albeit with some significant evolution over that period.[8] A significant recent change, recommended by our PWG, added uncontested elections of directors to the list of matters in Rule 452 on which brokers are not permitted to vote street name shares without instructions. That proposal was approved by the SEC in 2009 effective at the beginning of 2010.[9] Most recently, the Dodd-Frank legislation has required exchanges to have rules prohibiting broker voting of uninstructed shares for executive compensation proposals, and the NYSE has filed such a rule and the SEC has approved it.[10]

Even while recommending the amendment to Rule 452 to add uncontested elections of directors to the "may not vote" list, the PWG voiced its concern with the low "turnout" among retail beneficial owners in stockholder meetings.[11] Following the release of the PWG Report, one of its members, Stephen Norman, developed a proposal he called Client Directed Voting ("CDV")[12], which would, in effect, allow a beneficial owner through his brokerage agreement to provide a "good until cancelled" instruction on how to vote on matters at company meetings.

While the PWG took no position on CDV, it was of interest to many of its members. In addition, the NYSE has had separate exploratory discussions with SEC staff regarding how such a process might work. And of course the SEC has requested comment on it in the Concept Release, referring to CDV as "Advance Voting Instructions."

Given the increasing limitations that have been and may in the future be placed on broker voting of uninstructed shares,[13] the NYSE believes it is appropriate for the SEC to look for ways to facilitate voting of the shares held by beneficial owners, particularly the retail owners that have historically voted in such small numbers. The policy concern with Advance Voting Instructions is that it enables beneficial owners to, in effect, express a view on a matter in advance of receiving the information supplied by the issuer in its proxy statement. Of course, if a beneficial owner wishes to vote after reviewing all the relevant proxy statement

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8 See PWG Report at 7-8 for a useful history of NYSE Rule 452 and broker discretionary voting.

9 See Concept Release, footnote 11. The PWG Report is available at http://www.nyse.com/pdfs/PWG_REPORT.pdf

10 SEC Release No. 34-62874; File No. SR-NYSE-2010-59, September 9, 2010.

11 See August 27, 2007 Addendum to the PWG Report at 4-6. The Addendum is available at http://www.nyse.com/pdfs/PWGAddendumfinal.pdf.

12 See id.

13 In addition to disallowing broker voting on executive compensation, Section 957 of the Dodd-Frank Wall Street Reform and Investor Protection Act also requires exchange rules to preclude broker voting on such other matters as the SEC may require.

disclosures, it has the means to do so under the current proxy voting system (and under any contemplated version of an Advance Voting Instruction arrangement).

Much of the discussion around Advance Voting Instructions is on how complex a menu of choices should be given to beneficial owners. Obviously, the more complex the menu of choices, the more complex will be the task of implementing and administering the system. At least to start, the NYSE believes that a relatively modest number of required choices will be best.

We consider the following to be the minimum elements necessary in an Advance Voting Instruction system:

- Brokers should be required to elicit choices from street name clients at the time an account is opened, subject to the client's right to decline to participate[14].
- The choices must at a minimum be to vote with the issuer's recommendation, or against it, or to abstain, or alternatively that the shares be voted in the same proportion as those of the broker's retail clients who do provide voting instructions for the particular shareholder vote.
- Clients participating in an Advance Voting Instruction system can make different choices for different stocks, but must select a default position for newly acquired stocks, subject to the ability to make or change a company-specific choice at any time.
- Clients must receive notice of each proxy and have the ability to actually vote (or instruct the broker how to vote) in each case.

Some have claimed that such a "basic" version of Advance Voting Instructions will largely return us to an era in which the shares of beneficial owners who did not provide voting instructions were automatically voted for management. However, if a shareholder is satisfied with company management and is willing to support its recommendations across the board, it can be argued that he or she should have the right to do so. In contrast to institutions, which often have to hold positions in order to adhere to a specified investment philosophy or to have holdings that reflect the equity market as a whole, the retail beneficial owner generally is free to "vote with his feet" and sell a stock which he or she does not like. In addition, stockholders are free to provide a broker with discretion whether to buy or sell a particular stock; it seems inappropriate to preclude the stockholder from empowering the broker to effect the more ministerial task of voting the stock in accordance with advance instructions provided by the investor.

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[14] The ultimate goal would be that if a beneficial owner declined to participate in the Advance Voting Instruction System, and neglected to give specific instructions with respect to a voting item, then no broker voting would be allowed. However, the NYSE recognizes that it may be preferable to continue the existing rules regarding broker voting of uninstructed shares for an interim period to allow AVI to be fully implemented and permit all participants to become used to utilizing the system.

While we believe there are advantages to brokers offering Advance Voting Instruction programs that contain more sophisticated choices, including the ability to model instructions on the voting policies of certain institutions, we are concerned that if Advance Voting Instructions are only permitted to be offered with such a range of choices it may be more difficult to initially effectuate the program.

Regardless of whether the SEC determines to permit Advance Voting Instructions, it should take other steps to try to increase voting by retail beneficial owners. One suggestion that the NYSE believes has merit is that for companies using e-proxy, the SEC should simply reverse its earlier position that the Notice of Internet Availability of Proxy Materials must precede the voting form by at least ten days, and permit companies to provide the proxy card (or voting mechanism) along with the Notice and allow shareholders to vote immediately. This has the virtue of allowing the solicited shareholder to act immediately, rather than having to leave the task of voting to another day – and never getting to it. If there is a concern that this will not in fact increase voting by retail beneficial owners, or will increase uninformed voting, the SEC can permit this on a trial basis, with a "sunset" so that the rule would have to be reconsidered after a set period.

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NYSE Euronext appreciates the opportunity to submit our views on these issues, and looks forward to providing further comments on these and other proxy-related issues as the Commission considers specific policy initiatives and rulemaking.

Very truly yours,

cc: The Hon. Mary Schapiro, Chairman
The Hon. Luis Aguilar, Commissioner
The Hon. Kathleen Casey, Commissioner
The Hon. Troy Paredes, Commissioner
The Hon. Elisse Walter, Commissioner
Mr. Robert W. Cook, Director of Trading and Markets
Ms. Meredith Cross, Director of Corporation Finance
Mr. James Brigagliano, Deputy Director of Trading and Markets
Mr. David S. Shillman, Associate Director of Trading and Markets