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Securities and Exchange Commission
100 F St. NW
Washington, DC 20549-9303
Rule-comments@sec.gov

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Dear Securities and Exchange Commission:

Here are my comments on the Concept Release on the U.S. Proxy System

In general, I believe that the system works well but that it can be improved to create better corporate governance through improved participation by informed shareholders.

I. **Proxy advisory firms**

Proxy advisory firms = Credit rating agencies, a disaster waiting to happen

One of the painful lessons of the recent financial crisis is that there was an overreliance on credit rating agencies. Numerous institutional investors outsourced their credit analyses by relying solely on credit ratings. As a result, a handful of individuals made most of the credit decisions, with disastrous results to themselves and the economy.

The proxy advisory firms are similar information intermediaries with similar economies of scale. There is a danger that all corporate governance will be placed in the hands of a few underpaid analysts at the advisory firms. This would be a huge mistake. As public companies produce a major part of the total goods and services produced in our economy, corporate governance is extremely important to the efficient functioning of the economy. It is too important to leave to few analysts in Rockville, Maryland. This is not to say that the proxy advisory firms are not doing a good job, but to say that the job they do is too important to leave to a just a handful of people.

The SEC should regulate the proxy advisory firms much as it does the credit rating agencies, with rules to prevent conflict of interest, and disclosure standards that permit easy tracking of their recommendations to permit analysis of the quality of their recommendations.

Proxy advisory firms should be required to recuse themselves from opining on any companies with whom they have a business relationship.

There are serious conflicts of interest when proxy advisory firms provide services to the issuers they are grading. Mere disclosure in the fine print will not remove the dangers of biased advice. The proxy advisory firms need to decide whether they are working for the issuers or the investors; they should not be permitted to work for both sides.

II. Retail investors

Eliminating the broker vote made it harder for me to vote.

Low-cost commissions and modern technology have made it cost effective for individuals to hold large numbers of individual stocks. I am a finance professor who practices what I preach in terms of diversification, and thus I hold a very large number of individual companies in my portfolio.

Voting all of these stocks is a royal pain. In general, I would not have bought the stocks if I did not have confidence in the management of the companies. This means that most of the time I vote along with management recommendations, although I can and do make my own decisions in several areas.

Traditionally, I relied on the “broker vote”, so that if I wanted to go along with management on the routine items I did not have to do anything and my vote counted. Now with the elimination of the broker vote it is much more difficult to vote as I actually have to take the time to prepare voting instructions.

Please give me Client Directed Voting!

I would very much like to be able to leave standing instructions with my broker to cast ballots in a certain way, as long as I have the ability to override the instructions whenever I want to. Please promulgate whatever rules are needed to make client directed voting easy to do.

III. Privacy considerations

<u>Keep the OBO option.</u>

The legislative trend in recent years has been to ever greater protection of customer privacy. Congressional concern for improving privacy protection has been expressed in health care (Health Insurance Portability and Accountability Act, HIPAA), education (Family Educational Rights and Privacy Act (FERPA), and financial services (Gramm Leach Bliley Act).

There are many good reasons why investors may want to maintain their privacy by not having their contact information given out to the companies or other shareholders. For example, they may not want to be solicited by the companies in areas unrelated to corporate governance. Others might not want to be pressured by the companies to vote certain ways. Some may not want their contact information floating around.

Some shareholders have very legitimate personal security concerns. In some foreign countries, the knowledge that a person owns significant assets makes them a target for kidnappers, who sometimes get the information by bribing clerks in financial institutions. This is one of the many reasons why foreign nationals often like to hold their assets in accounts at U.S. financial institutions.

Regardless of the reason, shareholders should have the right be Objective Beneficial Owners (OBOs) if they want to be.

Issuers have a legitimate desire to know their shareholder base. They already know who their larger holders are through the required SEC filings for large institutional investors and five percent owners. I do not believe that there is an overwhelming public interest large enough here to justify breaching the rights of shareholders to financial privacy.

<u>Privacy notices should explain an investors choice of OBO or NOBO</u>

In my May 15, 2008 comment letter on the proposed Regulation S-P, I pointed out that there was massive non-compliance by the brokerage industry with the spirit and letter of the privacy provisions of the Gramm Leach Bliley Act (GLBA). (http://www.sec.gov/comments/s7-06-08/s70608-94.pdf), Most brokerage firm privacy notices say nothing about a customer's right to choose OBO or NOBO status or the default for customers. For those firms that default to NOBO, they are in flagrant violation of GLBA if they do not inform their customers that they are giving up their contact information to the issuers.

As far as I can tell nothing has been done to bring the industry into compliance.

IV Empty voting

Empty voting should be explicitly banned

It is very easy to vote without having an economic interest in the firm. For example, one could go long in a cash account at one brokerage firm, and then short the stock in an account at another broker. In this way, the investor gets voting rights without any price risk because the long and short positions balance out. One can also get empty voting rights by purchasing the stock and then hedging it with derivatives such as equity swaps, single stock futures, or options.

Although this practice is probably rare in the United States, the potential for serious mischief exists, especially around close elections. The SEC should promulgate an anti-fraud rule that explicitly bans the practice.

V Voting mechanics

Announce record dates and agenda items in forms 10-Q or 8-K

Shareholders generally don't find out about upcoming votes until after the record date. One easy solution to this problem is to require formal disclosure of upcoming record dates, either in a 10-Q or 10-K or in an 8-K filing. In this way, shareholders will be better informed about upcoming votes. Such disclosures should also include a preliminary bullet point description of what the upcoming ballot items will be. For example:

- Election of directors
- Approval of executive compensation plan
- Shareholder proposal to require improved environmental practices

Send reminder messages to increase voter participation.

I am sure that retail voter participation would increase substantially if reminder notices were sent out to investors whose votes have not been received. It should be quite easy for the service provider to send email reminders.

Incorporate voting directly from brokerage firm web sites.

Folio Investing (www.folioinvesting.com) has a really neat electronic platform that permits their customers to vote directly from their brokerage accounts without messy voting instruction forms or separate logins. All brokerage firms should be encouraged to make voting this easy.

Encourage shareholder participation be relaxing proxy solicitation rules.

Informed debate is one of the best ways of reaching important decisions. By giving shareholders better freedom to communicate with each other, corporate governance can be improved. Currently, many shareholders feel the proxy solicitation rules effectively bar them from discussing company affairs with other shareholders.

XBRL for proxy statements is a great idea!

There is a lot of very useful information in proxy statements on executive compensation and other fun topics. The sooner it is in XBRL, the better.

Let issuers pick their service provider.

There is no reason why the NYSE or the SEC should be getting into the fee setting business. When an issuer wants to contact shareholders, it should be able to contract with any capable service provider to distribute voting materials and collect votes. This will provide the benefits of competition. The chosen service provider could then get the names and contact information regarding the shareholders via DTCC, which would obtain them from DTCC participants. DTCC would charge a fee for this service, a part of which would go to the brokerage firm participants on a per name basis.

Shareholder disclosures need to be improved.

The standard “black box” warning about the risks of margin account does not warn customers of the potential loss of voting rights or tax problems with substitute payments in lieu of dividends. The warning should be updated to include both of those.

VI Other

Proposals should be more explicit about what other jurisdictions do.

One weakness of many SEC proposals is a lack of discussion about what other jurisdictions around the world are doing. We do not have to re-invent the wheel; we can learn for the mistakes and successes of other places. Although there was a brief footnote about the UK experience, it would be helpful to the public discussion for the SEC to gather and discuss the approaches taken in many different countries around the world.

URLs should be in citations more often.

One thing that would be helpful would be for SEC releases to contain the URLs for all the references. Athough there are many urls in this release, there could be a lot more. This would help us to click through to sources.

Respectfully submitted,

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