SOCIETY OF CORPORATE SECRETARIES
& GOVERNANCE PROFESSIONALS

November 22, 2010

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

Re: Concept Release on the U.S. Proxy System, File No. S7-14-10
Regarding Accuracy, Transparency, and Efficiency of the Voting Process (Section III.)

Dear Ms. Murphy:

The Society of Corporate Secretaries and Governance Professionals (the "Society") appreciates the opportunity to respond to the Securities and Exchange Commission's (the "Commission") Concept Release on the U.S. Proxy System, SEC Rel. No. 34-62495 (July 14, 2010) (the "Concept Release").

The Society is submitting several comment letters, each addressing different portions of the Concept Release. This letter addresses the issues outlined in **Section III** of **the Concept Release, entitled: "Accuracy, Transparency, and Efficiency of the Voting Process,"** including over- and under-voting, reconciliation and allocation methodologies, vote confirmation, proxy voting by institutional securities lenders and proxy distribution fees. In addition, this letter addresses the **"Central Data Aggregator"** model of proxy distribution. In preparation for this and other comment letters the Society has submitted, and plans to submit in response to the Concept Release, the Society surveyed its members to collect data regarding a number of issues ("Society Concept Release Survey" or "Survey"). The results of the Survey are attached (Appendix A).

Founded in 1946, the Society is a professional membership association of over 3,100 attorneys, accountants and other governance professionals who serve more than 2,000 companies of most every size and industry. Society members are responsible for supporting the work of corporate boards of directors, board committees and the executive management of their companies, regarding corporate governance and disclosure. Our members generally are responsible for their companies' compliance with the securities laws and regulations, corporate law, and stock exchange listing requirements.

Introduction

Society members and their companies depend on the accuracy, efficiency, transparency, integrity and reliability of the proxy distribution and voting process. The corporate proxy is the primary means by which shareholders exercise their voting rights and it has played a critical role in the development of corporate governance in the United States. The fundamental purpose of the proxy system, in our view, is to deliver proxy materials to

shareholders on a timely basis, and to receive timely and accurately recorded shareholder votes or vote instructions, so that the 13,000 public companies that conduct annual meetings each year receive the necessary quorum and hold successful meetings. We believe that the current proxy system functions well, although as with any process, there is room for improvement.

As more companies adopt majority voting standards for director elections, Society members are concerned that proxy access and targeted shareholder activism, combined with the loss of the broker discretionary vote and the increasing influence of proxy advisory firm recommendations, may result in more contested and closer director elections in the future, which in turn will drive greater demand for transparency and accuracy in voting results. Accordingly, although our member Survey results do not suggest the need to overhaul the current system, the Society supports certain enhancements to the current system. In considering potential changes, we support the Commission's stated intention to evaluate carefully the potential risks of any proposed change (lower reliability and significantly increased costs) and to ensure that the proposed benefits outweigh the potential risks. For example, 33% of our Survey respondents could not answer the question regarding a preference for pre-reconciliation or post-reconciliation because they did "not know the implications of either." Accordingly, it is extremely important that the proxy voting system continue to work effectively and that the current levels of reliability are not jeopardized by unintended consequences of well intentioned "reform."

The Survey results regarding the accuracy, transparency and efficiency of the proxy voting process support the Society's view that:

- The current system functions well for routine annual meetings; in the overwhelming majority of the cases, annual meetings are held successfully, and without incident.
- Proxy materials are distributed to both registered and beneficial owners reliably and on time.[1] Survey respondents are largely unaware of any incident of "over-voting."
- Most members have not experienced significant problems with the tabulation of voting results or the accuracy of their voting returns in annual meetings.
- Some members have reported incidents of voting problems, some involving large numbers of shares; they support a fully auditable voting system, that addresses the issues of under-voting and over-voting and that permits votes to be confirmed.[2]
- Most Society members support vote confirmation, but only if such a system would not increase their companies' costs, or if the increase in costs would be minimal.[3]

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[21] See Survey Responses to Questions 15 and 16.
[2] Comments of UnitedHealthGroup on Concept Release, dated October 22, 2101.
[3] See Survey Responses to Question 19.

I. OVER-VOTING, UNDER-VOTING, AND RECONCILIATION METHODS

Some Society members have reported instances where positions reported for tabulation by a respondent bank or broker exceeded their voting position, resulting in a potential over-voting situation (as shown either on DTC's records or through an omnibus proxy issued in their favor by a participant in the DTC system). See e.g., the Comments of UnitedHealth Group, dated October 22, 2010. Our Survey however, did not identify instances where over-voting significantly impacted the results of an annual meeting. Of the 88 members who responded on the subject to the Society's Survey, only one respondent reported a "somewhat insignificant impact," and 38 (or 43%) reported an "insignificant impact" – which the Survey defines as "not impacted at all". None reported that over-voting had a "very significant," or "somewhat significant" impact on the meeting results.[4] Thus, the data we have gathered does not appear to support the perception that over-voting, if it is occurring to any significant degree, is having a significant impact on election results.

We do not suggest, however, that the Commission infer from the absence of such data that no further study is warranted. Most (56%) members who responded to our Survey indicated that they *simply do not know* whether over-voting is, or is not, having a significant impact on their election results. Part of the problem, it seems, is the lack of transparency with respect to parts of the process. To our knowledge, corporate secretaries are not routinely advised by their transfer agents or inspectors of election that reconciliations are being made in the process of presenting votes for tabulation, much less the extent to which any such reconciliations have been made. Nor are corporate secretaries advised by the banks and brokers who vote shares of their companies what allocation methods they use. Thus, corporate secretaries generally do not know the consequences of either reconciliation or allocation methods used in any given election. Perhaps requiring intermediaries to disclose the methods they use would be helpful. The Society also supports the SEC's proposal to gather additional empirical data on the impact of the various reconciliation methods on voting under a range of circumstances, and to determine whether any of the methods, inherently, or in practice, advantage one class of shareholders over another, or prevent shareholders who wish to vote from doing so.

A. Pre- vs. Post-Reconciliation

Share lending transfers voting rights from the lender to the borrower and can cause the potential for over-reporting. Banks and brokers who lend shares may have share positions on their books and records that exceed the positions at the Depository Trust Company ("DTC"). When this occurs, proxy tabulators do not accept reported votes until the discrepancy is reconciled. Banks and brokers use different reconciliation models, namely, "pre-reconciliation," "post-reconciliation," or a hybrid of the two.

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[4] See Question 17 of the Survey.

As we understand it, the pre-reconciliation model results in less chance of over-reporting because, before sending voting instruction forms (VIFs) to customers, the bank or broker compares the number of shares it holds in aggregate at DTC with its aggregate customer position, and in the event of an imbalance determines which of its customers will be entitled to vote and the number of shares that will be allocated to each, and sends VIF forms only to those entitled to vote. However, we also understand that depending on the allocation method used by the bank or broker, the pre-reconciliation method may result in fewer retail votes (such as in the case of a retail investor who holds shares on margin and receives a VIF for less than his or her full share ownership position). We also understand that this method may be more costly, since reconciliation is done in all cases, even where the expected vote is far less than the bank or broker's DTC position.

In the post-reconciliation model, VIFs are sent to all customers for their full share position (including retail investors who hold shares on margin) and reconciliation is performed only if more VIFs are returned than the bank or broker's aggregate DTC position. In that event, the banks or brokers allocate their votes among customers from whom they have received VIFs, before casting their votes. In most cases, because of low retail participation generally, brokers do not need to reduce the vote of retail holders who exercise their voting rights. However, the post-reconciliation procedure can result (and may have on occasion resulted) in over-reported positions by individual brokers, as the broker may send VIFs to customers representing more shares than it actually holds in the aggregate at DTC or as to which it has the right to vote by omnibus proxy. This method, some claim, would allow holders who are not the proper shareholder to vote the shares. Nevertheless, it can result in a higher number of retail shares voted in the instance where holders with margin accounts vote all their shares rather than having them reduced as a result of loans having been made in respect of some of their margin shares.

The hybrid model attempts to reconcile the problems noted above pertaining to the reduction of the retail vote and potential over-reporting of the bank or broker's position, because the bank or broker gives preference in the pre-reconciliation allocation model to those customers who have indicated they want to vote. Thus some brokers will "call back" loaned shares if a retail holder asks to vote 100% of the shares held in their margin account. However, this model is neither a guarantee that those who want to vote all of their shares will receive a VIF for the full amount, nor a guarantee that all customers who have indicated that they want to vote actually will vote. There also may be additional costs if customers need to be polled to determine if they wish to vote.

As long as beneficially owned shares are held in fungible bulk at Depository Trust Company (and we do not propose to change that), some method of vote reconciliation will be necessary. When our members were asked in the Survey whether brokers should use a pre-reconciliation or post-reconciliation method, 33% responded that they were unable to answer the question because they are unaware of the implications of either method; 31% were in favor of requiring pre-reconciliation; 23% supported either method, so long as it is disclosed; and 12% were in favor of requiring post-reconciliation.

Given these responses, the Society is unable to take a position regarding which method of reconciliation is preferable. Instead, we propose that the SEC allow banks or brokers the flexibility to determine which method of reconciliation is best for them, depending on their customer base and costs, so long as the method used is disclosed, easy to understand and consistently applied.

B. Allocation

Allocation occurs when a bank or broker must assign the votes to various customer or proprietary accounts if its DTC position is less than the amount of voting instructions such bank or broker has received. Prior to reporting the votes, a bank or broker must decide whether to decrease proprietary positions and/or margin accounts. Issuers are not aware generally how these choices are made, but the Society believes that in considering rulemaking on allocation methodology, the Commission should require that the allocation methodology used should be disclosed, easy to understand, and consistently applied.

II. VOTE CONFIRMATION

Over 80% of respondents to the Society Survey support a system of individual investor vote confirmation if it would not increase issuer costs, or would increase issuer costs only minimally. About 7% of Survey respondents do not support vote confirmation. Only 3% support such a system unconditionally. Thus, Society members are interested in improving vote confirmation, but in a cost-effective manner.

We are not in a position to know the costs of vote confirmation, much less the costs of potential changes to enhance the current system. We understand, however, that confirmation at the nominee level (i.e., from a tabulator to the banks and brokers) does not currently take place and could be established without significant additional cost. Confirmation at the nominee level would involve both reporting of a beneficial owner's position to the vote tabulator and reporting from the vote tabulator back to the bank or broker (or its agent) stating that the position was voted as instructed. The bank or broker could make confirmation information available to interested beneficial holders in a variety of ways, including providing such information on its voting platform. So long as the bank or broker has received the confirmation from the tabulator to its agent (usually Broadridge), we believe that this method of vote confirmation can be provided at a reasonable cost to those who desire it, and would enhance the accuracy of the voting process.[5]

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[5] Several Society members and staff are members of The Independent Steering Committee of Broadridge Investor Communication Solutions, formed in 1993 with the support of Linda Quinn, then Director of the Commission's Division of Corporation Finance. The Steering Committee establishes performance criteria for Broadridge, monitors Broadridge's performance under established criteria and receives copies of independent audit reports of Broadridge's performance compared to established criteria and compliance with applicable rules and regulations.

The ability to provide vote confirmation already exists and is used by institutional investors through ProxyEdge, a service provided by Broadridge, in instances where Broadridge acts as the tabulator for a meeting. The Society recommends that the SEC require tabulators, transfer agents, and/or other intermediaries to make vote confirmation available for all meetings, regardless of who is acting as tabulator, without increasing the costs to issuers.

III. PROXY VOTING BY INSTITUTIONAL SECURITIES LENDERS

A. The SEC Should Permit, but not Require, Companies to Give Advance Notice of Annual Meeting Agendas

As explained below, the Society has concerns about the proposal to publish annual shareholder meeting agendas in advance of the record date so that institutional securities lenders can recall loaned shares in order to vote on certain ballot issues. The Society's concerns regarding such proposal is that it could be impractical, and it could disenfranchise fund participants by encouraging selective voting based on some, but not all, agenda items. The effect of the proposal may also confuse investors since the final agenda may look different than the earlier agenda that was disseminated, given the fact that some shareholder proposals are negotiated up to the day the proxy is filed, and certain management proposals are not finalized until close to the proxy filing deadline. Nevertheless, since a majority of our members surveyed would support a company's *ability* to give advance notice in order to accommodate lenders, we recommend that if the SEC considers rulemaking in this area, any rule be permissive rather than mandatory.

(1) Advance Notice May Be Impractical

The Society is concerned that it may be impractical to give advance notice of the annual meeting agenda. Company record dates are generally set as early as permitted by relevant state statutes to accommodate the complexity of printing and distribution. Companies report that their agenda items are often not final by the record date, and often will not be final until shortly before the proxy materials are printed. This is true where, for example, companies may be awaiting decisions on no-action requests and finalizing management proposals with their Boards.

(2) Advance Notice May Undermine the Voting Process

The Society is also concerned that the advance notice of a record date, coupled with advance notice of an agenda, could facilitate deliberate empty voting or manipulation by investors interested in influencing the vote on a particular matter. An investor would only need to acquire voting power for the one day identified as the record date, and, depending on the circumstances, this power could be obtained with minimal economic risk, through various hedging or trading strategies. The investor who acquired such empty voting power

could have interests quite different than, or even opposed to, the interests of the issuer and its long-term shareholders.[6]

(3) Advance Notice Could Disenfranchise Fund Participants

In addition, requiring advance notice of meeting agendas in order for institutional investors to determine whether to "call back" shares on loan so they can vote on "important" matters could also undermine the voting process by disenfranchising fund participants as it would encourage institutional holders to vote, or not to vote, based on the preliminary meeting agenda. Part of the value of share ownership is the right to vote, and the beneficial owners of institutional investment portfolios have an interest in this right, in addition to their economic benefits of share ownership. A recent report by the NYSE Commission on Corporate Governance highlighted the responsibility of shareholders to thoughtfully vote their shares:

> Shareholders have a responsibility to vote shares in a thoughtful manner based upon the particular situation, in alignment with their economic interest. If these shareholders are institutional investors, then this includes considering the long-term interests of their investors. (Report of the NYSE Commission on Corporate Governance p. 30)

Thus, the Society believes that a practice that would encourage institutions to pick and choose which agenda items "merit" recalling shares is not in the best interests of fund owners or in the best interests of the shareholders of the particular company whose proxy statement is at issue.

Nor does the Society support the concept of a dual record date. The Survey of members indicated that only one-third said they would consider using a dual record date approach if rules were amended to make it less burdensome.

For the reasons set forth above, we request that the SEC not propose rules that would require companies to disclose information about their annual meeting agenda in advance of the filing of their proxy statements, but rather that it consider rules that would allow issuers to do so if they so choose.

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[6] See, for example, In the Matter of Perry Corp., Release No. 34-60351, July 21, 2009, available at http://www.sec.gov/litigation/admin/2009/34-60351.pdf, discussed in the Concept Release at footnote 318.

[7] Page 42994 of Concept Release.

B. Disclosure of Fund Voting -- The SEC Should Amend Form N-PX

(1) Form N-PX should include the Actual Number of Votes Cast by the Funds

As noted in the Concept Release, funds registered under the Investment Company Act are required to disclose on Form N-PX how they voted the proxies related to their portfolio securities. The Release further explains that when a fund lends its portfolio securities, the borrower of those shares receives proxy voting rights for the duration of the loan. The fund therefore loses its ability to vote the shares unless the loan terminates and the shares are returned to the fund prior to the record date for the relevant company. However, when the fund completes the Form N-PX indicating how it voted portfolio securities during the 12-month period covered by the report, there is no indication whether any portion of its holdings in any particular company was on loan and therefore not entitled to be voted by the fund.

Against that backdrop, and in response to the specific questions posed on this issue in the Concept Release, we would support proposed amendments to Form N-PX to require disclosure of the actual number of (i) votes cast by the funds and (ii) shares not voted because the securities were on loan or for some other reason. As the SEC has noted, "[i]nvestors in mutual funds have a fundamental right to know how the fund casts proxy votes on shareholders' behalf."[7] It would naturally follow that these shareholders have a right to know if the fund is <u>not</u> casting such votes for all its shares because the fund made the decision to lend securities during a period of time that includes the record date for voting rights.

(2) Form N-PX Should Include Whether Funds Vote in Accordance with Proxy Advisory Firms

<u>a. Why this Additional Disclosure is Necessary</u>

Proxy advisory firms continue to exert increasing influence over on the outcome of annual meeting votes. Some funds readily state to issuers that they "outsource" their decision-making responsibilities on proxy voting matters to such firms. Other funds state they just "consider" the recommendations made by proxy advisory forms.

Form N-PX currently includes a column that requires institutional investors to disclose if their vote on each proxy item was consistent with management's recommendation on that voting item. Even though management's recommendation is disclosed in a company's proxy statement, the SEC nevertheless requires this specific information in Form N-PX to highlight publicly if the funds are merely voting the "company line." The logic for similar disclosure is therefore equally strong when applied to proxy advisory firms, since they are also making recommendations as to how to vote on the agenda

items. The new disclosure on Form N-PX described below would be factual in nature and would avoid any subjective self-assessment of the role that proxy advisory firms play in fund decisions.

To be clear, we are not suggesting that the SEC limit funds' right to subscribe to proxy advisory services. We do, however, believe that regardless of what input and advice they may receive from third parties, the funds have an obligation to their investors to carefully consider all of the voting items presented in order to make decisions in the best interests of their investors. The SEC itself recently confirmed that "institutional investors, whether relying on proxy advisory firms or not, must vote the institutions' own shares and, in doing so, must discharge their fiduciary duties to act in the best interest of their investors and avoid conflicts of interest; institutions are not relieved of their fiduciary responsibilities simply by following the recommendations of a proxy advisor."[8] Requiring the additional disclosure described below will assist fund investors in assessing whether the fund managers are fulfilling their fiduciary obligations.

b. Institutions Should Disclose the Name(s) of the Advisory Firm and Whether It Voted With or Against the Recommendation

Form N-PX should be amended to require institutional investors to identify by name the proxy advisory firm(s) to which they subscribe with respect to their portfolio holdings. Further, the form should include additional columns requiring disclosure of whether the institution voted "with" or "against" the recommendation of each such proxy advisory firm with respect to each voting item.[9] This would be very similar to the above-referenced existing requirement for funds to disclose whether they voted "for" or "against" the recommendations of management.

This incremental disclosure is important so that investors in mutual funds can assess the influence of the proxy advisory firm(s) on how the funds vote the shares in their portfolios. Certain investors might have no concerns about their funds following all voting recommendations of a particular advisory firm. Other investors, however, may view this as an apparent and inappropriate outsourcing of decision making by the funds; this disclosure

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[8] SEC Release No. 34-60215 (approving amendments to NYSE Rule 452), July 1, 2009, p. 26, *available at* http://www.sec.gov/rules/sro/nyse/2009/34-60215.pdf.

[9] We understand that most funds that subscribe to proxy advisory firms use only one such firm. However, if the fund has more than one firm, that should be disclosed to investors in the Form N-PX (i.e., if the fund uses two advisors, there would be a column for each advisor that indicates whether the fund voted "with" or "against" the advisor's recommendation on each voting item).

[10] SEC Release No. 33-8188 (approving final rules on disclosure of voting policies and proxy voting records by funds), effective April 14, 2003.

would provide those investors with an opportunity to open a dialogue with the fund managers about the role of the proxy advisory firm(s) in the fund's voting decisions. As the SEC noted when it adopted the rule requiring disclosure of proxy voting by funds, "regardless of whether all, or a majority of, investors are interested in proxy vote disclosure, we believe that fund shareholders who are interested in this information have a fundamental right to know how the fund has exercised its proxy votes on their behalf."[10] Surely, that fundamental right must include information about the potential impact on fund voting by a third party (proxy advisory firm) that has no economic stake in either the fund or in the portfolio company.

IV. PROXY DISTRIBUTION FEES

A. The Current Fee/Rebate Structure

The Society understands that significant costs have been driven out of the proxy distribution system in recent years, due to the incentive fee structure adopted by the NYSE in 1997 to increase efficiencies such as householding, electronic delivery, etc. In addition, as a result of the adoption of Notice and Access, issuers have been able to reduce significantly their overall proxy distribution costs.[11] We also understand that Broadridge has made significant investments both to maintain the level of service reliability that we have today[12] and to develop new services and products: virtual annual meetings and shareholder forums, to name a few. We commend Broadridge for developing the Notice and Access platform in response to SEC rulemaking in such a short period of time and for making it quickly available. Society members who have used notice and access have significantly reduced their overall printing and postage costs as a result.

We note that our Survey results indicate that 72% of respondents say they would support de-regulation of Broadridge fees, but most of those (53% of all respondents) would do so only if de-regulation would not result in materially higher fees. Some 28% of respondents would not support de-regulation of Broadridge fees. The Society is aware that Broadridge has produced an economic study[13] showing that its prices for proxy distribution on the beneficial side are lower than when it serves as transfer agent for registered shares.

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[11] Notice and Access: Statistical Overview of Use with Beneficial Shareholders: As of June 30, 2010. Available at Broadridge.com.

[12] Deloitte and Touche Report on Performance Measurement Criteria; Deloitte and Touche Report on Compliance with SEC and NYSE Proxy Rules; Deloitte and Touche Reports on Vote Accuracy; Deloitte and Touche SAS 70 Review; ISO 27001 and ISO 9001 Certifications.

[13] Compass Lexecon: An Analysis of Beneficial Proxy Delivery Services – May 11, 2010.

This market data would tend to support the reasonableness of Broadridge's fees on the registered side as compared to their competitors in this same business. Nevertheless, we are also aware that other studies indicate that registered-side proxy processing is less expensive than street side.

A number of Society members have concerns about the reasonableness of prices for a number of services and components of services in the rate schedule, as discussed below. The Society is pleased that the NYSE has recently undertaken to review the fees -- the first such review since 2001. The Society believes that this group is in the best position to evaluate the current fee structure.[14] We recognize that "fair and reasonable" is a common regulatory standard, but respectfully suggest that the NYSE or the SEC clarify its meaning in the proxy fee context.

(1) Background

The Society has been involved in every review of proxy fees since at least the mid-1990s. Under the original proxy fee rules, the purpose of the fee was merely to reimburse NYSE members for the added costs they would incur in carrying out the new responsibility of forwarding annual meeting materials to their beneficial shareholder clients. When fees were solely a reimbursement mechanism, the main question was whether they reasonably approximated the actual cost of street-name proxy distribution. This task was theoretically simple; an audit firm could review the fees and render an opinion. However, under the original $.70 per-mailing fee system, some brokerage houses actually profited because they had more efficient recordkeeping and mailing operations. Thus, from an issuer and shareholder perspective, this system bred waste and excessive fees. The broker had no incentive to do anything but mail as many proxy packages as could be justified, as efficiently as possible and keep the difference.

As shareholder rolls grew each year and the number of accounts per shareholder grew with Cash Management Accounts, IRAs, 401ks, etc., the cost of every component of the proxy process rose – including printing, postage and fees. So did the consensus that the per-mailing fee was an obstacle to progress.

In the mid-90s, the NYSE began a process to change the fee structure, to include incentives for deploying technology that would reduce costs and waste. The NYSE's overall goal was to reduce the total cost of the annual proxy process even if proxy fees rose for smaller issuers.[15] As the Commission is aware, the "new" fee schedule, which was

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[14] We are pleased to see that Society members have been included on this Committee. However, we note that there is only one smaller company representative. The rest of the Committee's issuer representatives come from companies with market capitalizations that place them among the largest 5-1-% of all publicly traded companies. Since the NYSE sets the de facto fees for all publicly traded companies, we urge the SEC to recommend to the NYSE an expansion of the Committee to also include representatives of small and mid cap companies.

[15] SECURITIES AND EXCHANGE COMMISSION, Release No**.** 34-38406**;** File No**.** SR-NYSE-96-36. (March 24, 1997). *Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change Relating to a One-Year Pilot Program for Transmission of Proxy and Other*

adopted in 1997, included incentive fees.[16] These incentive fees were developed under the "fair and reasonable" standard.

The NYSE has again constituted a Committee to evaluate fees. We think, as the NYSE's Proxy Working Group concluded in 2006, that "[i]ssuers and shareholders deserve periodic confirmation that the [proxy] system is performing as cost-effectively, efficiently and accurately as possible...."[17] We would hope that the 2010 NYSE Group will provide such a confirmation to shareholders and issuers.

Therefore, as a preliminary matter, we recommend that the 2010 NYSE Group develop a definition of "fair and reasonable" that harmonizes the goals of cost reimbursement and incentives for continuous improvement. Perhaps the correct focus for this effort should be on the relatively concrete goals of cost-effectiveness, efficiency and reliability. In addition to covering the reasonable costs of service, the assessment could include an evaluation of whether the services are provided in a cost effective and efficient manner.

The Society hopes to continue its role of assisting in development of the current incentive-based fee system. We are intensely interested in whether the current fees continue to strike the optimal balance between issuers and intermediaries, while continuing to facilitate the application of technology and elimination of waste in the proxy process.

B. Incentive Fees Intended to Reduce Paper Mailings

In response to the question regarding reimbursement of incentive fees on an ongoing basis, the Society urges the NYSE Committee to examine whether it is reasonable to charge a fee on an ongoing basis after paper mailings have been suppressed, and for what period of time. We question whether issuers should continue to pay the same amount for suppressing the same mailings year after year, once a shareholder's preferences have stabilized. Accordingly, we recommend that NYSE Committee consider a fee structure that would step down, and after three years eliminate entirely, the incentive fee for mailings previously suppressed--unless there is data which shows that costs appropriate for reimbursement continue to be incurred beyond that period.

Shareholder Communication.. ("The NYSE has examined the cost increases of its issuers under the proposed fee structure and believes that, in general, most of the issuers would receive a cost reduction with this proposal. There may be some increases for small issuers, but the new nominee cost may be partially offset by the lower basic rates and lower expenses. Moreover, there may be other costs savings, particularly "out-of-pocket savings," and the new incentive fees may result in fewer mailings, decreasing printing and mailing costs.")

[16] *Id.* ("The Commission believes, however, that **because the current fee schedule only provides for reimbursement of costs, service providers do not have any incentive to develop and implement new technologies.** As discussed in more detail below, **the Commission believes that certain incentive fees are necessary** to encourage these service providers to develop cost effective methods of distributing shareholder materials.") [emphasis supplied.]

[17] REPORT AND RECOMMENDATIONS OF THE PROXY WORKING GROUP TO THE NEW YORK STOCK EXCHANGE, June 5, 2006, p. 28. available at http://www.nyse.com/pdfs/PWG_REPORT.pdf.

C. Wrap and Separately Managed Accounts

The Concept Release asks a series of questions regarding proxy distribution fees billed for separately managed accounts, where multiple beneficial owners may delegate their voting decisions to a single investment manager, and for "wrap" accounts. Brokers offer a variety of accounts with names such as "separately managed accounts," "managed accounts," "wrap accounts," "separate accounts," "individually managed accounts," "actively managed accounts" and "privately managed accounts." Although these accounts may vary in terms of the services provided and the fees charged, the Society believes they all share a common (and, for purposes of this discussion, a fundamental) feature — ***the delegation of voting decisions by the beneficial owners of the securities held in such accounts to the investment manager***.[18] The Society believes that where beneficial owners of securities in separately managed accounts, wrap accounts or any other similar accounts authorize an investment manager to receive proxy materials and vote proxies on the beneficial owners' behalf, the relevant proxy distribution fees billed to an issuer should be based on the proxy distribution to the single investment manager, regardless of the number of beneficial owners on whose behalf that investment manager is exercising delegated voting rights.

The Society's understanding is that under the current proxy distribution fee system separately managed accounts (and similar accounts)--other than wrap accounts--generate suppression fees — fees for not mailing proxy materials to the beneficial owners who have delegated voting authority to the investment manager. In contrast, wrap accounts do not incur suppression fees. We believe there is no basis for this disparate treatment. Accordingly, we believe that such fees charged with respect to separately managed and similar accounts go beyond reasonable expenses and should be eliminated.

We understand that the maintenance of records for separately managed accounts, wrap accounts, or even suppressions of accounts through householding where names or addresses or preferences change, requires some cost. The Society acknowledges that in these instances there may be a basis for including such maintenance costs in the calculation of a “fair and reasonable” fee.

D. Impact of Fees on Communication with Beneficial Owners

The Society believes that the current fee structure may tend to discourage voluntary communications with beneficial holders, but not to a significant degree. In response to the Society’s Survey on this question, more than two-thirds (65%) of the respondents said they

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[18] As stated by the Commission when adopting Rule 3a-4 under the Investment Company Act of 1940:

> If a client delegates voting rights to another person, the proxies, proxy materials, and, if applicable, annual reports, need be furnished only to the party exercising the delegated voting authority.

Investment Company Act Release No. IC-22579 (March 24, 1997), available at http://www.sec.gov/rules/final/ic-22579.txt.

communicate informally with shareholders on proposals in their proxy materials.[19] The majority of those who communicate "informally" focus on institutional shareholders, although one-third also reach out to individual shareholders.[20] When asked for the primary reason why they did not communicate beyond the largest holders, about one-quarter (26%) of the respondents indicated that the cost and/or "complexity of the shareholder communications system" was the primary reason why they did not communicate beyond the largest holders.[21] Therefore, while our Survey shows some impact from the fee structure on communications with beneficial holders outside the mandated proxy process, it does not appear to be the key consideration.

E. Broker-Dealer Rebates

The Concept Release also asks several questions regarding the relationship between broker-dealers and proxy service providers (namely, Broadridge) and the costs to broker-dealers as measured against the payments received by broker-dealers from such providers The Concept Release also asks whether the current rebates between Broadridge and larger broker-dealers should be permitted. As stated earlier, many of the Society's members have issues with the costs that they pay to Broadridge which are in turn rebated back to the broker-dealers. However, due to the lack of transparency concerning the relationship between brokers and proxy service providers, the Society lacks the necessary information and perspective to respond to these questions. However, we encourage the NYSE to explore the reasonableness of the practice some broker-dealers use of charging the maximum reimbursement fee in all cases, even when they receive from Broadridge a rebate of a portion of that fee. It is our understanding that some large broker dealers – those that outsource proxy processing for large number of beneficial shareholder accounts to Broadridge – have bargained for and receive a portion of the proxy processing fee to ensure that proxy processing may in itself be a profitable operation within the firm. Other broker-dealers that receive no rebate from Broadridge still perform some proxy processing functions to facilitate the "hand-off" to Broadridge but receive no reimbursement fee for doing so. We recommend that the SEC and the NYSE gather data about the relationships between Broadridge and the brokers as part of its inquiry into the reasonableness of the fees charged to issuers.

F. Notice and Access

The Society is aware that the NYSE declined to set a notice and access fee when fees were last reviewed because, in its view, the notice and access procedure was new and it was not certain that it would be used. As noted in the Release, the pricing structure under notice and access appears to be based on the "full set" delivery pricing under the NYSE rules ***plus*** an incremental notice and access processing fee (ranging from $.05 to $.25 per stockholder). As a result, the cost for distributing a notice can aggregate from $.50 to $ .70 per stockholder, representing the processing fee and notice and access fee, before the

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[19] See Survey Responses to Question 36.
[20] See Survey Responses to Question 37.
[21] See Survey Responses to Question 38.

intermediary coordination fee and postage. If the processing of the notice is eliminated through Proxy Edge, householding, e-delivery or managed account processing, the per stockholder fee is increased by $.25 (or $.50 for issuers with fewer stockholders).

Additional fees may also be charged for services such as converting transfer agent records, storing copies of the proxy material, printing materials upon request and satisfying the fulfillment requirements of the notice and access rules. It is not apparent that the notice and access fee reflects the cost savings inherent in the process, which calls into question the reasonableness of the fee. Under notice and access, only a notice is distributed, as the proxy statement and annual report to stockholders are available online or upon request. The distributor therefore is not required to accept delivery of significant numbers of proxy statements and annual reports, unload them from trucks, store them, insert them into envelopes (regardless of shape, size or weight), cart them to the post office and ultimately destroy or return unused copies. We assume that the fees approved by the NYSE in 2002 for the full set delivery model took these costs into account. Although these steps are unnecessary in the notice and access model, issuers are charged these fees *plus* an incremental fee. We recommend that the NYSE Committee look into whether the fees should be reduced to take into account this reduction of work.

G. Lack of Incentives to Reduce Costs to Issuers

In response to the questions in the Release regarding lack of incentives to reduce costs for issuers, the Society believes that the current proxy distribution system may in fact create a lack of incentives to reduce costs to issuers due to the following factors:

- Brokers have no incentive to control – or even to monitor – the fees charged by proxy service providers. Brokers select proxy distribution services but are not responsible for their fees.
- The fee structure lacks transparency. Issuers have no way of knowing to what extent proxy distribution fees are related to the actual costs of the services provided and cannot easily dispute the charges invoiced by the service provider.
- The NYSE and other SROs have not adopted a fee schedule for the notice and access delivery model, so there is no limit on the amount of fees charged when an issuer elects to use notice and access.
- One proxy service provider (Broadridge) accounts for 99% of the market. This market concentration may result in unreasonable fees compared to the costs of the underlying services.

While lower fees could result from more competitors in the market, the Society recognizes that it may not be practicable to stimulate additional competition, particularly in the short term. Thus, we recommend focused regulatory oversight designed to ensure that the fees are reasonable in relation to costs.

H. Competition in the Market

The Concept Release also seeks input on how to foster greater competition in the proxy distribution system. Broadridge's dominance in the market has led some to question whether there are barriers to entry that prevent effective competition. It may be the case that these services are highly capital intensive and have the characteristics of a natural monopoly, which would mean that encouraging additional providers of these services would not be in the public interest. On the other hand, the Society assumes that competition is generally in the public interest. Therefore, if the NYSE believes that more competition in the market is desirable, we would urge it and the Commission to engage professional economists to study the issue and advise them. If this is done, we urge both the NYSE and the Commission to establish the same standards for cost, service and reliability for every provider of service in the market, including Broadridge.

Although there is market data, discussed above, suggesting that the street name fees are less than those charged for registered holders, we are not aware of any public data comparing the current fee structure with the fully allocated costs of providing these services. It is not apparent that the current fee structure takes into account the efficiencies that must have been created as a result of newer technologies and related developments such as notice and access (discussed elsewhere). We would urge the NYSE Fee Committee to consider that issue.

We also urge the NYSE Committee to review the current fee structure in regard to the burden it imposes on smaller companies. As indicated above, the NYSE concluded that the burden on smaller companies in 1997 was reasonable in light of the incentives that would help them reduce their overall costs. We recommend that the NYSE consider this issue again, in light of the additional securities compliance burden that has been imposed on smaller companies since 1997, and provide incentives for new market entrants to offer lower cost services to smaller companies with more limited means.

Moreover, experience in this area generally suggests that new models of service are likely to evolve. Some providers of these services may be encouraged to enter these markets to develop new methods that may favor smaller issuers, as has been the case with smaller, locally based transfer agents.

V. THE CONCEPT OF A CENTRAL DATA AGGREGATOR

Finally, the Concept Release explains and seeks views on whether the creation of a central data aggregator would be appropriate. At the outset, the Society notes that while the Shareholder Communications Coalition strongly supports such a model, the Society lacks the probative data necessary to join in such support. In light of the significant changes to the current system that would result from the establishment of such a system, and the significant costs and risks of disruption that would be caused by implementation of such a system, we instead recommend that the Commission engage economists to study the proposal and provide an analysis of its estimated costs and benefits. In this regard, we again note that for issuers, reliability is the most important aspect of the proxy distribution system, and we

would be concerned about any proposal to experiment with untested concepts in a complex, critical system which currently works very well a majority of the time.

The Society also questions the notion of a "non-profit" utility central data aggregator. Since public utilities are entitled to recover their reasonable costs of providing service, including a reasonable return on invested capital, they are not considered non-profits, and we question whether that term is appropriately used in describing the proposed central data aggregator. In this regard, we note that Broadridge, the current de facto "data aggregator" is a public company, and its profit margin is publicly available.

Nearly half of the respondents to the Society's Survey (49%) indicated that they are not in favor of creating an independent, non-profit central data aggregator responsible for compiling a list of all of a company's beneficial owners. The remainder would support such a model **but only** if it would not lead to materially higher issuer costs, cause a delay in the receipt of the vote, and/or increase issuers' logistical or regulatory burdens (48%).

From our member's perspective, the Survey results illustrate the vital importance of both maintaining reliability and avoiding higher costs in connection with any proposed changes to the current proxy delivery and voting framework. Creation of a central data aggregator would necessarily create significant execution risk.[22] Among the significant concerns we urge the Commission to consider are: (1) the potential for delayed receipt of voting results, declines in retail and/or institutional voting, and quorum risk; (2) the potential for significant increases in issuer costs and regulatory burdens; and (3) broker-dealers' interest in preserving the confidentiality of customer information.

It is critical that the Commission provide direct or indirect oversight over the costs incurred by any central data aggregation function. In the event a data aggregator were deemed appropriate, the Society would not object to DTC as a potential candidate for that role. As explained in the Concept Release, DTC now plays a crucial role in the proxy process through its execution of an omnibus proxy, by passing state-law voting rights through to participating broker-dealers and banks, and compiling a list of the names and securities positions of such participants. However, we reiterate that the most important aspect of the proxy distribution and voting system for issuers is that it be reliable and that any proposed revisions to the current system not impair current levels of reliability and not increase issuers' costs.

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[22] As will be discussed in our comment letter to the Commission on Part IV of the Release including the NOBO/OBO issue, a significant majority of Survey respondents (94%) support rule changes that would permit issuers to obtain contact information for all beneficial owners – OBOs as well as NOBOs; of these, 26% indicated unconditional support, but two thirds (67%) supported such measures so long as it would not result in material cost increases, delays in voting, and/or increased logistical or regulatory burdens. Question 42.

Conclusion

We appreciate the opportunity to comment on this important proposal and would be happy to provide you with further information to the extent you would find it useful.

Respectfully submitted,

Chair, Interim CEO & President
The Society of Corporate Secretaries & Governance Professionals

cc: Mary L. Shapiro, Chairman
Luis A. Aguilar, Commissioner
Kathleen L. Casey, Commissioner
Troy A. Paredes, Commissioner
Elisse B. Walter, Commissioner
Meredith Cross, Director, Division of Corporation Finance
Felicia Kung, Chief, Office of Rulemaking, Division of Corporation Finance

APPENDIX A

Concept Release Survey – Main Report

	Count	Percent
I am responding as a:		
a. Corporation member	89	94.68 %
b. Law firm member representing primarily mid or small cap companies	5	5.32 %
c. Law firm member representing primarily large cap companies	0	0.0 %
Total Responses	**94**	**100.00 %**
What is the size of your company (or if you are a law firm, the companies you typically represent)?		
a. large cap (market cap above $ 10 billion)	37	39.36 %
b. mid cap (market cap $2 to $10 billion)	25	26.60 %
c. small cap (market cap below $2 billion)	32	34.04 %
Total Responses	**94**	**100.00 %**
We have arranged the questions by topic so that you may answer only those related to a certain issue by de-selecting topics below. If you do not de-select specific topics, the survey will prompt you for all the questions.		
Proxy Advisory Firms	83	11.96 %
Proxy Voting and Distribution	92	13.26 %
Proxy Mechanics-Vote Confirmation	90	12.97 %
Proxy Mechanics-Dual Record Date & Advance Notice of Meeting Agenda	79	11.38 %
Proxy Mechanics-Distribution & Fees	86	12.39 %
Retail Vote Participation	85	12.25 %
Communications with Shareholders - General	94	13.54 %
Communications with Shareholders - NOBO-OBO Classifications	85	12.25 %
Total Responses	**694**	**100.00 %**
1. What percentage of your shares are voted in line with proxy advisory firm recommendations?		
a. 0 to 5%	1	1.37 %
b. 5 to 10%	5	6.85 %
c. 10 to 20%	16	21.92 %
d. 20 to 30%	22	30.14 %
e. more than 30%	29	39.73 %
Total Responses	**73**	**100.00 %**

Count and Percent

Concept Release Survey

	Count	Percent
2. How would you describe the impact that the recommendations of proxy advisory firms (e.g., RiskMetrics Group, Glass-Lewis, etc.) typically have on the outcome of proposals presented in your company's annual meeting?		
a. no impact (they influence the votes of 0-5% of shares voted)	2	2.60 %
b. modest impact (they influence the votes of 5-10% of shares voted)	12	15.58 %
c. material impact (they influence the votes of 10% or more of shares voted)	63	81.82 %
Total Responses	**77**	**100.00 %**
3. Has the anticipated or final voting recommendation of one or more advisory firms been solely responsible for your company's decision to withdraw or modify a proposal on a corporate governance or compensation matter?		
a. yes	39	49.37 %
b. no	40	50.63 %
Total Responses	**79**	**100.00 %**
4. If you answered "yes" to the above question, the primary reason for doing so was because:		
a. the recommendation could materially or significantly impact election results	13	32.50 %
b. the recommendation could materially or significantly impact the results of a vote regarding non-election matters (e.g., a vote on an incentive plan, shareholder proposal, etc.)	25	62.50 %
c. the board ultimately found the advisor's recommendation persuasive	0	0.0 %
d. other	2	5.00 %
Total Responses	**40**	**100.00 %**
5. Has a proxy advisor made a recommendation that was based on materially inaccurate or incomplete information, or reported as a fact, information that was materially inaccurate or incomplete?		
a. yes, at least once	31	39.24 %
b. yes, on several occasions	20	25.32 %
c. no	28	35.44 %
Total Responses	**79**	**100.00 %**

	Count	Percent
6. If you responded "yes" to the above question, did the proxy advisor correct the recommendation or factual assertion?		
a. yes	23	43.40 %
b. no	30	56.60 %
Total Responses	**53**	**100.00 %**
7. If you responded "no" to the above question, was the primary reason that:		
a. the company did not receive a draft of the advisor's recommendations	8	22.22 %
b. the company received the advisor's draft report without adequate time to discuss the matter with the proxy advisor	4	11.11 %
c. the company received draft report but the advisor was unwilling to reconsider its recommendation or factual assertion	8	22.22 %
d. the advisor was willing to review its recommendation or factual assertion but did not change its original recommendation or factual assertion	16	44.44 %
Total Responses	**36**	**100.00 %**
8. If the proxy advisor changed a vote recommendation or the text of its report after you reached out with clarifications, did the change impact the pending vote?		
a. yes	21	42.86 %
b. no, because it was too late and votes had already been cast and/or the change was not widely circulated	6	12.24 %
c. no, for other reasons	22	44.90 %
Total Responses	**49**	**100.00 %**
9. In a situation where your company has disagreed with a proxy advisor's vote recommendation, how successful has the company been in persuading institutional holders to vote in a manner inconsistent with the recommendation?		
a. have not tried to contact individual investors	10	13.51 %
b. have tried but without success	8	10.81 %
c. have had success occasionally but not consistently	36	48.65 %
d. have had consistent success (i.e., persuading some, but not necessarily all institutional holders)	20	27.03 %
Total Responses	**74**	**100.00 %**

	Count	Percent
10. If you responded b or c to the above question, what is the most typical reason for the company's lack of success?		
a. investors will not engage meaningfully	13	30.23 %
b. investors have engaged but disagreed	6	13.95 %
c. investors have engaged but were unwilling to stray from advisor's recommendation	20	46.51 %
d. other reasons	4	9.30 %
Total Responses	**43**	**100.00 %**
11. At a minimum, how much time would your company need to effectively review and comment on a draft proxy advisory report or recommendation?		
a. 1 business day	4	5.00 %
b. 2-5 business days	45	56.25 %
c. 5-10 business days	26	32.50 %
d. 10-14 business days	4	5.00 %
e. not applicable to my company because I don't receive vote recommendation reports	1	1.25 %
Total Responses	**80**	**100.00 %**
13. Has your company observed any discrepancies in the tabulation of voting results in connection with your last annual meeting of shareholders?		
a. yes	7	7.95 %
b. no	81	92.05 %
Total Responses	**88**	**100.00 %**
14. If your answer to the preceding question was yes, how significant were these discrepancies?		
a. very significant (the outcome of a vote was impacted by more than a few percentage points and a measure passed or failed as a result of the discrepancies)	0	0.0 %
b. somewhat significant (the outcome of a vote was impacted by a few percentage points, but a measure did not pass or fail as a result of the discrepancy)	1	10.00 %
c. somewhat insignificant (the outcome of a vote was not impacted by more than one percentage point and a measure did not pass or fail as a result of the discrepancy)	3	30.00 %
d. insignificant (the outcome of a vote was not impacted at all)	6	60.00 %
Total Responses	**10**	**100.00 %**

	Count	Percent
15. How would you characterize the reliability and timeliness of the distribution of proxy materials to your "registered" shareholders, meaning those included on the books of the company's transfer agent on your company's behalf?		
a. reliable and timely	66	75.86 %
b. generally reliable and timely, but with some, more than insignificant, exceptions	20	22.99 %
c. generally not timely	1	1.15 %
d. generally not reliable	0	0.0 %
Total Responses	**87**	**100.00 %**
16. How would you characterize the distribution of proxy materials to your "street name" holders (i.e., shareholders who own shares through banks, brokers, or other intermediaries) on your company's behalf?		
a. reliable and timely	49	56.98 %
b. generally reliable and timely, but with some, more than insignificant, exceptions	31	36.05 %
c. generally not timely	6	6.98 %
d. generally not reliable	0	0.0 %
Total Responses	**86**	**100.00 %**
17. "Over-voting" occurs when a broker reports more votes to the tabulator/inspector of elections than the number of shares that the broker holds at the DTC. To what extent did "over-voting" impact your company's last annual meeting?		
a. very significantly (the outcome of a vote was impacted by more than a few percentage points and a measure passed or failed as a result of the discrepancies)	0	0.0 %
b. somewhat significantly (the outcome of a vote was impacted by a few percentage points, but a measure did not pass or fail as a result of the discrepancy).	0	0.0 %
c. somewhat insignificantly (the outcome of a vote was not impacted by more than one percentage point and a measure did not pass or fail as a result of the discrepancy)	1	1.14 %
d. insignificantly (the outcome of a vote was not impacted at all)	38	43.18 %
e. do not know	49	55.68 %
Total Responses	**88**	**100.00 %**
18. One proposal has been advanced that would require brokers and banks to reconcile their long positions with their share lending positions before they send out a voting instruction form. This is known as "pre-reconciliation." An alternative is for banks and brokers to reconcile their long positions with their share lending positions after voting instructions forms are received back from the beneficial owners, known as "post reconciliation." While "pre-reconciliation" is more accurate in theory because it prevents retail clients of brokers from voting shares that the broker has "loaned" to third parties, "post-reconciliation" results in more retail votes cast overall, and all such votes are cast by shareholders who have an economic interest in your shares (because a client who has shares "on loan" still owns the shares for all other purposes, including the incurrence of gains or losses). Would you support:		
a. requiring all brokers to have a pre-reconciliation procedure	28	31.11 %
b. requiring all brokers to have a post-reconciliation procedure	11	12.22 %
c. do not know the implications of either so can't answer the question	30	33.33 %
d. either method, but with disclosure of the method used	14	15.56 %
e. either method	7	7.78 %
Total Responses	**90**	**100.00 %**

	Count	Percent

19. Would you support a system whereby all individual investors (registered and street name) could obtain confirmation that their votes were counted as cast or instructed?

a. yes unconditionally	3	3.41 %
b. yes, but only if the cost to issuers did not increase	44	50.00 %
c. yes, but only if the cost increase to issuers was minimal	27	30.68 %
d. yes, but only if the individual investor paid the cost	3	3.41 %
e. no	6	6.82 %
f. not sure	5	5.68 %
Total Responses	**88**	**100.00 %**

20. Would you support a system whereby vote confirmation for all votes was available to issuers, i.e. through an independent party?

a. yes unconditionally	11	12.50 %
b. yes, but only if the cost to issuers did not increase	32	36.36 %
c. yes, but only if the cost increase to issuers was minimal	35	39.77 %
d. no	5	5.68 %
e. not sure	5	5.68 %
Total Responses	**88**	**100.00 %**

21. Would you support a system in which beneficial owners were granted actual proxy authority (rather than receiving a voting instruction form and casting votes through a securities intermediary)? Note that there would be no broker discretionary vote in such a system.

a. yes	8	9.09 %
b. yes, but only if the cost to issuers did not increase (other than a minimal increase)	8	9.09 %
c. yes, but only if new system did not materially increase regulatory or other burdens for issuers.	8	9.09 %
d. b and c above	22	25.00 %
e. no	28	31.82 %
f. not sure	14	15.91 %
Total Responses	**88**	**100.00 %**

22. Do you expect, or have you experienced, a failure to reach a quorum at any shareholder meeting as a result of the loss of the broker discretionary vote for the election of directors?

a. yes	0	0.0 %
b. no, but only because the company included a "routine" proposal on the ballot	21	23.86 %
c. no	67	76.14 %
Total Responses	**88**	**100.00 %**

	Count	Percent
23. Do you believe that all participants in the proxy distribution system should be required to share voting information with each other in order to permit investors to receive confirmation that their votes were included in the final election results?		
a. yes	40	45.45 %
b. no	16	18.18 %
c. not sure	32	36.36 %
Total Responses	**88**	**100.00 %**
24. Would you consider using a dual record date approach (separate notice and voting record dates) for your annual meeting, as recently permitted under Delaware law, if the SEC amended the proxy rules to make such an approach less burdensome?		
a. yes	25	33.78 %
b. no	49	66.22 %
Total Responses	**74**	**100.00 %**
25. How far in advance of the record date could your company provide notice of the proposals it plans to present at the shareholders meeting?		
a. not possible before the record date	21	30.88 %
b. 1 business day before the record date	10	14.71 %
c. 5 business days before the record date	9	13.24 %
d. more than 5 business days before date	28	41.18 %
Total Responses	**68**	**100.00 %**
26. Would you support an issuer's ability to give advance notice of shareholder proposals at meetings so that institutions could recall shares on loan in order to vote on certain shareholder proposals?		
a. yes	41	56.16 %
b. no	32	43.84 %
Total Responses	**73**	**100.00 %**
27. Do you believe that proxy distribution fees paid to Broadridge and other brokers and banks (or their agents) should be de-regulated (i.e., not regulated by either the SEC or national securities exchanges) and set by the marketplace?		
a. yes	16	19.28 %
b. yes, but only if de-regulation will not result in materially higher fees for my company	44	53.01 %
c. no	23	27.71 %
Total Responses	**83**	**100.00 %**

	Count	Percent

28. Do you believe that the fees paid to transfer agents for facilitating communications with registered holders should be regulated (i.e., by either the SEC or national securities exchanges)?

a. yes	8	9.52 %
b. yes, so long as it does not result in materially higher costs to issuers	26	30.95 %
c. no	42	50.00 %
d. not sure	8	9.52 %
Total Responses	**84**	**100.00 %**

29. Do you believe that total proxy distribution fees (including printing, postage and processing fees), on a per unit basis, charged by transfer agents are generally higher or lower than those charged for proxy distributions to street name holders?

a. higher	14	16.87 %
b. lower	24	28.92 %
c. about the same	15	18.07 %
d. not able to determine	30	36.14 %
Total Responses	**83**	**100.00 %**

32. Did your 2010 annual meeting include any unusual items (i.e., election contests, approval of stock incentive plans)?

a. yes	42	50.60 %
b. no	41	49.40 %
Total Responses	**83**	**100.00 %**

33. Did you use Notice and Access this year in any form?

a. yes	32	39.51 %
b. yes, for a sub-set of shareholders only	15	18.52 %
c. no	34	41.98 %
Total Responses	**81**	**100.00 %**

34. Do you think retail voter participation would improve if issuers could include a voting instruction form or proxy with the Notice of Internet Availability?

a. yes	58	70.73 %
b. no	6	7.32 %
c. not sure	18	21.95 %
Total Responses	**82**	**100.00 %**

	Count	Percent
35. Which of the following alternatives do you believe will significantly improve retail investor participation in the voting process: (Please select all that apply.)		
a. increased investor education	43	29.66 %
b. use of advanced voting instructions (client directed voting)	49	33.79 %
c. creating more opportunities for investors to communicate with each other (electronic shareholder forums, etc.)	11	7.59 %
d. the availability of enhanced brokers' platforms for facilitating the distribution of issuer communications	42	28.97 %
Total Responses	**145**	**100.00 %**
36. Do you communicate informally with your shareholders on proposals that are in your company's proxy materials, or that are expected to be included in the materials?		
a. yes	59	64.84 %
b. no	32	35.16 %
Total Responses	**91**	**100.00 %**
37. If you responded "yes" to the above question, which holders do you typically communicate with informally:		
a. only institutional shareholders	38	64.41 %
b. institutional shareholders and retail shareholders who have significant holdings	14	23.73 %
c. a larger group that includes more than shareholders with significant holdings	7	11.86 %
d. generally all shareholders	0	0.0 %
Total Responses	**59**	**100.00 %**
38. If your company only communicates with its largest shareholders, what is the primary reason that the company does not communicate with a greater spectrum of its shareholders?		
a. normally unnecessary to meet the company's objectives	44	66.67 %
b. cost of shareholder communications	3	4.55 %
c. complexity of the shareholder communications system	1	1.52 %
d. both b and c above	13	19.70 %
e. other reasons	5	7.58 %
Total Responses	**66**	**100.00 %**

	Count	Percent

39. How do you expect that the anticipated adoption of the SEC's "proxy access" proposal and the elimination of broker discretionary voting in director elections will impact your company's desire to communicate with shareholders in communications that are not required under the federal proxy rules?

a. expect to need to communicate with a significantly greater spectrum of shareholders in the future	27	29.67 %
b. do not expect any material changes to company's approach to communications	24	26.37 %
c. not sure yet, and will adjust approach only if necessary	40	43.96 %
d. already generally communicate informally with all shareholder	0	0.0 %
Total Responses	**91**	**100.00 %**

40. If the company were provided with the names and addresses for all of its shareholders without exception, would the company likely communicate informally with more shareholders than it does today?

a. yes, generally with all shareholders	14	15.22 %
b. yes, with a significantly larger spectrum of shareholders compared to current practice	17	18.48 %
c. yes, but only a marginally greater number of holders compared to current practice	24	26.09 %
d. no, would likely continue current practice	37	40.22 %
Total Responses	**92**	**100.00 %**

41. If you responded "yes" to the above question, in communicating informally with shareholders would your company likely communicate directly with them using its own internal resources, or instead use the services of an intermediary, such as a proxy solicitor, transfer agent, or broker's agent?

a. would typically use internal resources	22	36.07 %
b. would typically engage an intermediary for such communications	9	14.75 %
c. not sure yet	30	49.18 %
Total Responses	**61**	**100.00 %**

42. Today a company may obtain the contact information from brokers regarding non-objecting beneficial owners, or "NOBOs." A company may not, however, obtain contact information from brokers regarding its objecting beneficial owners, or "OBOs." Would you support an amendment to the rules to allow you to obtain contact information for all of your beneficial owners - OBOs and NOBOs?

a. yes, unconditionally	21	25.61 %
b. yes, so long as it does not result in materially higher costs to issuers	13	15.85 %
c. yes, so long as it does not materially increase the logistical or regulatory burden on issuers	9	10.98 %
d. both b and c	33	40.24 %
e. no	6	7.32 %
Total Responses	**82**	**100.00 %**

	Count	Percent

43. How frequently throughout the year does your company communicate with NOBOs by using a NOBO list in a communication that is not required under the federal proxy rules?

a. never	44	54.32 %
b. rarely	29	35.80 %
c. occasionally	7	8.64 %
d. frequently	1	1.23 %
Total Responses	**81**	**100.00 %**

44. If you responded "never" or "rarely" to the above question, what is the primary reason that the company does not communicate with NOBOs?

a. the cost of ordering the NOBO list is prohibitive	3	4.11 %
b. overall costs of communicating with shareholders are prohibitive	2	2.74 %
c. both a and b above	12	16.44 %
d. normally unnecessary to meet company's objectives	56	76.71 %
e. other reasons	0	0.0 %
Total Responses	**73**	**100.00 %**

45. How frequently throughout the year does your company communicate with its registered shareholders in a communication that is not required under the federal proxy rules?

a. never	30	37.04 %
b. rarely	29	35.80 %
c. occasionally	18	22.22 %
d. frequently	4	4.94 %
Total Responses	**81**	**100.00 %**

46. If you responded "never" or "rarely" to the above question, what is the primary reason that the company does not communicate informally with registered holders?

a. such communications generally have been unnecessary to meet the company's objectives	52	83.87 %
b. the overall costs of communicating with registered shareholders are prohibitive	4	6.45 %
c. the system for communicating with registered holders is too complex	2	3.23 %
d. both b and c	4	6.45 %
e. other reasons	0	0.0 %
Total Responses	**62**	**100.00 %**

	Count	Percent

47. The current proxy rules allow companies to send communications to NOBOs, but preclude them from sending proxy materials directly to both NOBOs and OBOs. Instead, a company must send proxy materials through an intermediary for brokers and banks, typically Broadridge. Would you support an amendment to the rules that would allow you to send proxy materials directly to all of your beneficial owners using your own distribution agent?

a. yes, unconditionally	11	13.41 %
b. yes, so long as it does not result in materially higher costs to issuers	12	14.63 %
c. yes, so long as it does not materially delay receipt of the vote or increase the logistical or regulatory burden on issuers	8	9.76 %
d. both b and c	46	56.10 %
e. no	5	6.10 %
Total Responses	**82**	**100.00 %**

48. S Some have proposed to create more competition and shareholder-to-shareholder communications by giving an issuer and any of its shareholders access to a list of all of a company's beneficial owners - NOBOs and OBOs - from an independent, non-profit central data aggregator. Would you support such a restructuring of the proxy distribution system?

a. yes, unconditionally	2	2.47 %
b. yes, so long as it does not result in materially higher costs to issuers	4	4.94 %
c. yes, so long as it does not materially delay receipt of the vote or increase the logistical or regulatory burden on issuers	7	8.64 %
d. both b and c	28	34.57 %
e. no	40	49.38 %
Total Responses	**81**	**100.00 %**

49. If you responded "yes" to the above question, should registered shareholders also be included in such a system so that issuers have the option of hiring one single agent for the distribution of all proxy materials?

a. yes	40	95.24 %
b. no	2	4.76 %
Total Responses	**42**	**100.00 %**

	Count	Percent

50. Do you believe that shareholders should continue to have the right to keep their identities and share positions private from the companies in which they have invested?

a. yes	19	24.05 %
b. yes, but shareholders should be discouraged from making that choice by imposing a fee or requiring extra paperwork	19	24.05 %
c. no, shareholders should not have a right to privacy	18	22.78 %
d. no, the system should not impose burdens that disproportionally impact retail shareholders as compared to institutions, which have more resources to bear them	6	7.59 %
e. both c and d	17	21.52 %
Total Responses	**79**	**100.00 %**

51. If the incremental cost of proxy distributions to OBOs is greater than the cost of distributions to NOBOs, who should bear the additional cost?

a. issuers should continue to bear the incremental cost	8	9.88 %
b. brokers and bank custodians should bear the incremental cost	7	8.64 %
c. the shareholders requesting anonymity should bear the cost	38	46.91 %
d. b and c	28	34.57 %
Total Responses	**81**	**100.00 %**

52. Some have proposed a more restricted approach to providing issuers and other shareholders with access to the identities of all beneficial holders, which would entail the disclosure to issuers and their shareholders of all beneficial owners but only as of the record date for an annual meeting. Would you support this approach?

a. yes	27	32.93 %
b. no	25	30.49 %
c. not sure	30	36.59 %
Total Responses	**82**	**100.00 %**

53. Do you believe that encouraging or requiring the disclosure of the names and contact information to issuers one or more times per year will result in higher proxy solicitation costs for issuers, particularly if that beneficial owner information is also provided to other shareholders?

a. yes	38	46.34 %
b. no	9	10.98 %
c. not sure	35	42.68 %
Total Responses	**82**	**100.00 %**