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October 26, 2007

Christopher Cox, Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: NYSE Rule 452 – Broker Discretionary Votes in Director Elections

Dear Mr. Cox:

I am writing on behalf of the California Public Employees' Retirement System ("CalPERS"). CalPERS manages over $255 billion in assets on behalf of nearly 1.5 million members.

CalPERS wishes to express its continued support of the New York Stock Exchange's proposed amendment to its Rule 452 that would prohibit discretionary broker votes in most director elections. We also would like to note our disappointment with the Securities and Exchange Commission's failure to act on this rule proposal in time for the 2008 proxy season.

We hope to discuss with you the SEC's failure to act on this issue at our upcoming meeting on October 31. I have attached CalPERS' previous correspondence with you regarding this issue.

If you have any questions, please do not hesitate to contact me.

Sincerely,

PETER H. MIXON
General Counsel

Enclosures

cc: Commissioner Paul S. Atkins
Commissioner Kathleen L. Casey
Commissioner Annette L. Nazareth

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June 25, 2007

Christopher Cox, Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: NYSE Rule 452 – Broker Discretionary Votes in Director Elections

Dear Mr. Cox:

The California Public Employees' Retirement System (CalPERS), which manages over $245 billion in assets on behalf of nearly 1.5 million members, asks the Commission to adopt the amendments proposed by the New York Stock Exchange (NYSE) to its Rule 452. These amendments, which prohibit discretionary broker votes in most director elections, will increase the credibility and fairness of the election process. CalPERS supported the proposed rule change as originally filed on October 14, 2006, but does not object to the recent amendment to exempt companies registered under the Investment Company Act of 1940.

CalPERS has also suggested that the NYSE and other market participants continue to look at alternative reforms that can better address the quorum issues faced by registered investment companies. More specifically, with one exception, CalPERS advocates rule changes that would eliminate broker "discretionary" voting entirely, permitting shares held by brokers only to count toward the establishment of a quorum, regardless of the issuer and the matter to be voted upon. The one exception relates to matters that require a majority (or more) of outstanding shares to pass. CalPERS also recommends that the concept of proportional voting be further researched and considered for these matters. Otherwise, in such circumstances, shares held by brokers for purposes of establishment of a quorum but not voted on a proposal would be equivalent to "no" votes. Counting these broker "non-votes" would frustrate the intent of the proposed rule change and would, instead, promote "the stuffing of the ballot box" in favor of management which the proposed rule change is designed to minimize.

I attach a letter to the NYSE supporting their proposed rule change to Rule 452 and asking that the working group continue to look at further reforms involving broker voting as well as other issues affecting vote integrity. CalPERS asks the Commission to support this recommendation for further review and to adopt the proposed changes to Rule 452 immediately.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

PETER H. MIXON
General Counsel

Enclosures

cc: Commissioner Paul S. Atkins
Commissioner Roel C. Campos
Commissioner Kathleen L. Casey
Commissioner Annette L. Nazareth
John A. Thain, CEO, NYSE
Stephen Walsh, Vice President, Operations, NYSE
AnneMarie Tierney, Assistant General Counsel, NYSE

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June 25, 2007

Stephen Walsh
Vice President, Operations
The New York Stock Exchange
20 Broad Street
New York, NY 10005

Re: NYSE Rule 452 – Broker Discretionary Votes in Director Elections

Dear Mr. Walsh:

The California Public Employees' Retirement System (CalPERS), which manages over $245 billion in assets on behalf of nearly 1.5 million members, supports the recent efforts to amend the New York Stock Exchange (NYSE) Rule 452 relating to broker voting in director elections. CalPERS has asked the United States Securities and Exchange Commission (Commission) to adopt these proposed rule changes in time to become effective for annual meetings held in 2008.

CalPERS supported the rule change as originally filed on October 14, 2006, but does not object to the recent amendment to exempt companies registered under the Investment Company Act of 1940. CalPERS asks, however, that that the NYSE and other market participants continue to look at alternative reforms to address the issues faced by these companies. More specifically, with one exception, CalPERS advocates rule changes that would eliminate broker "discretionary" voting entirely, permitting shares held by brokers only to count toward the establishment of a quorum, regardless of the issuer and the matter to be voted upon.

The one exception relates to matters that require a majority (or more) of outstanding shares to pass. For these matters, CalPERS recommends that the idea of proportional voting be considered. Under the current rules, shares held by brokers for purposes of establishing a quorum, but not voted on a proposal, are equivalent to "no" votes. Counting these so-called broker "non-votes" frustrates the intent of the proposed rule change and instead promotes "the stuffing of the ballot box" in favor of management, which the proposed rule change is designed to minimize.

Rule 452 Should Be Amended As Proposed

CalPERS supports the NYSE Proxy Working Group's recommendation to eliminate director elections from the list of so-called "routine" matters on which discretionary voting by brokers is permitted. Director elections should never be dismissed as "routine" -- requiring management to affirmatively demonstrate to shareowners the merit of their endorsed candidates will go a long way to putting real voting power back in the hands of shareowners. CalPERS appreciates that some persons have expressed concerns over the proposed rule change as applied to investment companies, and for the sake of expediting passage of a much needed reform, CalPERS is not opposed to exempting investment companies from this proposed rule change in the short term. However, as explained below, CalPERS asks that the NYSE consider a more targeted solution to address the quorum problems faced by registered investment companies.

Broker Non-Votes Should Be Counted For Quorum Purposes Only

CalPERS asks that the NYSE continue to pursue an alternative identified by the Proxy Working Group to the quorum issues faced by investment companies. Under this alternative, brokers would have the limited authority as record owners to represent unreturned or uninstructed proxies at shareholder meetings for the sole purpose of establishing a quorum. With such a new rule in place, it would be unnecessary to retain the artificial "routine/non-routine" distinction which permits brokers to exercise "discretionary authority" to vote shares on some matters but not on others.

Removing the distinction between routine and non-routine votes will lead to a fairer and more democratic voting process. Shareowners would be placed on an equal playing field with management in proposing and voting on bylaw amendments and in taking other corporate action that requires shareowner approval. For example, under the current regime, proposals that would be deemed "routine" if introduced by management, would be considered "non-routine" if introduced by shareowners, because of Rule 42.11's prohibition against "discretionary" votes on matters introduced by shareowners and opposed by management. Permitting "discretionary" voting on such management-sponsored proposals gives management an unfair and unnecessary advantage over shareowners. The NYSE should consider: (1) eliminating "discretionary" voting entirely, (2) allowing broker votes to only count toward the establishment of a quorum, and (3) allowing, for the reasons discussed below, proportional voting where a matter requires a percentage "of outstanding shares" in order to pass.

Proportional Voting

The concern with eliminating discretionary voting at investment companies arises, in large part, from the provisions in the Investment Company Act of 1940 requiring certain corporate action to be approved by "a majority of outstanding voting securities" of the fund. This concern has equal applicability where relevant state law or corporate charter provisions require the affirmative vote of all outstanding shares in order for a proposed corporate action

to gain approval. Without the availability of discretionary voting by brokers, there is some concern that obtaining shareowner "approval" of such matters would be exceptionally difficult.

There is, however, a solution to this issue and one that would keep management-sponsored proposals and shareowner-sponsored proposals on an equal footing. That solution is proportional voting. Under proportional voting, uninstructed shares would be voted in the same proportion as instructed shares. In practice, this would result in virtually all of a corporation's outstanding shares being voted, and would render moot any concerns that arise in connection with heightened voting requirements.

The current broker voting rules render it difficult for shareowner-sponsored proposals to gain passage. This is particularly true for those requiring approval by a majority or supermajority "of outstanding shares" as opposed to "of votes cast."

This point is best illustrated with an example. In 2005, CalPERS encouraged the Goodyear Tire & Rubber Company ("Goodyear") to submit to its shareowners a management-sponsored proposal to declassify the board of directors. The proposal required a majority "of outstanding shares" to pass. Goodyear, however, would not agree to support the proposal and, accordingly, the proposal was not treated as "routine" pursuant to Rule 452 (as are all shareowner-sponsored bylaw proposals.) According to the Corporate Library, the declassification proposal received 81,495,897 votes in favor and 9,091,639 votes against. In other words, *the proposal was supported by over 89.9% of the votes cast.* Yet the proposal did not pass because it needed the affirmative support of a majority of votes *outstanding* and the broker non-votes were treated as "votes against."

Had a proportional voting mechanism been used to allocate the broker non-votes, the proposal would have easily passed. Accordingly, while CalPERS advocates eliminating broker discretionary voting based on the "routine/non-routine" distinction currently in place – not only in director elections, but in all shareowner votes – CalPERS asks that the NYSE consider permitting proportional voting when the applicable vote requires the affirmative vote of a majority or supermajority "of outstanding shares" in order to pass.[1]

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[1] Interestingly, in connection with the Goodyear vote, there were 64,986,877 broker non-votes for the declassification proposal but only 39,416,342 broker non-votes for a management-sponsored and endorsed equity compensation plan on the same ballot that required a majority of outstanding shares to pass and was considered non-routine. The difference in broker non-votes between the two proposals allowed the management-endorsed equity compensation plan to pass even though there were 26,626,356 votes cast against the equity compensation plan, while the unsuccessful declassifcation proposal received only 9,091,639 votes against and a higher percentage of votes cast in favor of the proposal, 89.9% versus 77.7%. This result illustrates the absurdity of the routine/non-routine distinction. To Goodyear's credit, the corporation did sponsor and endorse a declassification proposal the following year which obtained "routine" status as a result of management's support. It easily passed, not because shareowners felt different about declassification or because the shareowner base had turned over, but instead, it passed because broker discretionary votes were voted in favor of the proposal.

Conclusion

One of the most important aspects of share ownership is the ability to vote. The broker voting rules, especially in conjunction with votes requiring greater than a majority of votes cast, can make a mockery of shareowners' ability to meaningfully vote on important corporate issues. The current broker voting rules are biased in favor of management and effectively serve to disenfranchise shareowners. While it is often stated that the purpose of supermajority requirements is to provide corporations the ability to protect minority shareholders, these rules are most often used to block initiatives opposed by management and the board of directors but supported by most shareowners.

We thank the NYSE for addressing the problems caused by broker voting in the context of director elections and we look forward to discussing additional reforms that will serve to strengthen our capital markets by making corporations more accountable to their owners.

If you have any questions, please do not hesitate to contact me directly.

Very truly yours,

PETER H. MIXON
General Counsel

cc: John A. Thain, CEO, NYSE
Annemarie Tierney, Assistant General Counsel, NYSE