

April 12, 2011

By e-mail

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

Re: Comments on Concept Release on the U.S. Proxy System (34-62495)

Dear Ms. Murphy:

My name is Leonard Rosenthal. I have a Ph.D. in finance and teach financial markets and investments courses at Bentley University, Waltham, MA. I also invest on my behalf and have been doing so for more than 45 years. I am strongly in favor of a significant overhaul of the current “proxy plumbing” system which is seriously outdated, needlessly more complex than required given current technology, and not in the best interest of shareholders. Since most retail investors are required by their broker to hold their shares in “street name,” this means that a third party service provider<sup>1</sup> acts as distributor of the proxy statements and voter information forms (VIF). My shares are in street name, and as you will see from the discussion below, our archaic system which allows a monopoly supplier to control proxy services almost cost me my voting rights.

Below is a short discussion of two situations in which my voting rights were potentially seriously affected. I provide a more detailed account of the more flagrant case as an exhibit to this comment.

Case 1: I received the proxy material for a NASDAQ listed firm seven days before the annual meeting. Notably, the material was dated a full twenty-eight days before the meeting date. Given that I only first saw the material at night when I got home and needed to get my vote in by 11:59 p.m. the day before the meeting, I effectively had six days to read the proxy statement and the annual report, do any required research, and seek answers to any questions before deciding how to vote. For most people with busy schedules like mine, giving me such a short period to decide on my voting decision is clearly insufficient.

Case 2: I received the proxy material for a NYSE listed firm two and a half weeks before the annual meeting, April 11, 2011. This company has two classes of stock and I own shares in the class that has superior voting rights. After reading the proxy statement, I

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<sup>1</sup> Broadridge Financial has stated that it controls over 98% of the U.S. market for the distribution of proxy statements and VIFs.

examined the VIF and found that I would be voting for the directors nominated to represent the shareholders with inferior voting rights. That meant that I could not vote for the directors I was entitled to, but also I could not use my superior voting rights on two other issues of substance that were up for a vote. I made several calls to my brokerage firm over several days, and the effective intervention of the firm's investor relations officer resulted in my getting the correct VIF on the afternoon of April 6, 2011.

Our proxy plumbing must be modernized and monopoly control of the process has to end. The straightforward way to do this is have direct registration of the names of non-objecting beneficial owners at a central depository (such as DTC) or at the transfer agent.<sup>2</sup> There is no need to have stock held in street name. Issuers (not the brokerage firm) would then have the opportunity to determine which third party provider to use to distribute proxy information. This would allow the marketplace to determine which firm is most timely and cost effective distributor of proxy information. It is a win-win for shareholders and issuers.

Sincerely,

Leonard Rosenthal

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<sup>2</sup> Objecting beneficial owners would still have the right to have their shares registered in the name of a nominee.

### **Exhibit: Diary of efforts to correct a proxy processing error**

During the latter part of the week of March 20, I received proxy information relating to the NYSE company. I read the proxy and annual report the following weekend.

I called my brokerage firm's national headquarters on Monday, March 28 and spoke with a broker. I explained my situation to him and he spoke with his proxy department. I was told to call the issuers transfer agent to find out why I was given the wrong VIF. This VIF would allow me to vote for nominees who represent shareholders of the common stock, but not for nominees who represent the shareholders of the Class A, which are the shares that I own. I called the transfer agent on March 28, and on March 29 a representative. That person said that I had to call my brokerage firm because they were the only one who could straighten out the problem.

On Wednesday, March 30, I spoke with my local brokerage representative. He said that he would have to check with his proxy department. I faxed him my VIF card and pages from the proxy statement showing the names of the director nominees for each class of stock. I pointed that based on the VIF I had received, I could only vote for the directors representing the wrong class of common stock. He indicated that because it was so close to the April 11 annual meeting date, it may have been too late for anything to be done to correct the problem. I told him that if that if I could not vote the shares that I owned, I was going to file a complaint against his firm and the firm distributing the proxy material.

On the afternoon of March 30, I called the local broker back to see what he had learned from his proxy department. He said that he was told that there are two classes of Class A share – unrestricted and restricted. Only unrestricted shares could vote. Following that conversation, I e-mailed the Vice President of Investor Relations (“IRO”) and asked for a clarification on whether there are voting restrictions on Class A shares. The IRO called me back within an hour and left a voice message saying that there are restrictions on selling the shares but absolutely no restrictions on voting Class A stock. By this time, it was after business hours, so I could not call my local broker and inform him as to the correct information.

On Thursday, March 31, I called my broker and told him what the IRO had said. He asked for her phone number so that he could call her. Later, when I called him back, he said that his proxy department would have to do further checking and indicated that Broadridge was handling the distribution of proxy material.

On Friday, April 1, I called my broker and asked what he had found out. He said he expected to hear that day or by the following Monday, April 4 and that I should call him back on Monday. The annual meeting was scheduled for April 11.

On Monday, April 4, I called my broker to see if any progress had been made and he told me that he was still working on it but had no additional information.

Not hearing from my broker, I called him on the morning of Wednesday, April 6. He told me that he called the issuer's IRO, left a message, but that he had not heard back. Several minutes later, I called the IRO and she told me that she had just spoken with my broker. I called my broker early in the afternoon of April 6. He told me that he had been able to obtain the correct VIF and that I needed to get it back to him by the following morning. I asked him to fax the VIF to me, which I then filled out, and faxed back to him that day.

In over 45 years of investing I have never encountered this problem. Until 1995, when T+3 went into effect, my shares were always registered in my name and the issuer's transfer agent always got proxy material to me in a timely manner. After T+3, I was effectively forced to put all my current and future holdings in street name. Since then, I have held shares in well over a hundred different companies for a long enough time period to be eligible to vote at the annual meeting. Forced by this incident to look closely at the result of T+3, I realize now that all shareholders must expect to expect to encounter at least occasional obstacles to their voting rights, and that there is a very real chance of actually losing those rights to vote.